

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

4 IN RE: NATIONAL)
PRESCRIPTION OPIATE) MDL No. 2804
5 LITIGATION)
_____) Case No. 1:17-MD-2804

6)
THIS DOCUMENT RELATES)
7 TO ALL CASES) Hon. Dan A. Polster

8 - - -

9 Tuesday, October 16, 2018

10 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

11 - - -

12
13 Videotaped deposition of Raymond P. Carney,
14 held at the offices of BakerHostetler, 200 Civic
15 Center Drive, Suite 1200, Columbus, Ohio, commencing
16 at 9:09 a.m., on the above date, before Carol A. Kirk,
17 Registered Merit Reporter and Notary Public.

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1 - - -

2 P R O C E E D I N G S

3 - - -

4 THE VIDEOGRAPHER: Good morning.

5 We are now on the record. My name is
6 Darnell Brown, and I'm the videographer
7 with Golkow Litigation Services.

8 Today's date is October 16, 2018,
9 and the time is 9:09 a.m.

10 This video deposition is being
11 held in Columbus, Ohio in the matter of
12 National Prescription Opioid litigation
13 in the United States District Court for
14 the Northern District of Ohio.

15 The deponent is Ray Carney.

16 Counsel, please identify
17 yourselves for the stenographic record.

18 MS. QUEZON: Amy Quezon on behalf
19 of the Plaintiff.

20 MR. GRAY: Mark Gray on behalf of
21 the Plaintiff.

22 MR. KROEGER: Rick Kroeger on
23 behalf of the Plaintiff.

24 MR. LAMB: Archie Lamb on behalf

1 of the Plaintiff.

2 MR. PAPPALARDO: Giuseppe
3 Pappalardo on behalf of
4 Johnson & Johnson.

5 MR. CELLA: John Cella on behalf
6 of the Endo and Par Defendants.

7 MS. NOWAK: Darlene Nowak on
8 behalf of HBC Service Company.

9 MS. BORSAY: Casteel Borsay on
10 behalf of Walmart.

11 MR. CLARK: Miles Clark from
12 Zuckerman Spaeder on behalf of the CVS
13 Defendants.

14 MR. WILLIAMS: Eric Williams on
15 behalf of Prescription Supply, Inc.

16 MR. RODRIGUEZ: Nicholas Rodriguez
17 on behalf of AmerisourceBergen.

18 MS. MONAGHAN: Meghan Monaghan on
19 behalf of McKesson.

20 MS. ADAMS: Katelyn Adams on
21 behalf of Cardinal Health.

22 MR. PYSER: Steven Pyser,
23 Williams & Connolly, on behalf of
24 Cardinal Health and the witness.

1 THE VIDEOGRAPHER: The court
2 reporter is Carol Kirk who will now
3 swear in the witness.

4 - - -

5 RAYMOND P. CARNEY
6 being by me first duly sworn, as hereinafter
7 certified, deposes and says as follows:

8 CROSS-EXAMINATION

9 BY MS. QUEZON:

10 Q. Can you please state your full
11 name for the record.

12 A. Raymond Paul Carney.

13 Q. And, Mr. Carney, how are you
14 currently employed?

15 A. I am employed at Cardinal Health.

16 Q. And what do you do there?

17 A. I am the director of independent
18 retail sales for the Wheeling division of
19 Cardinal.

20 Q. And how long have you held that
21 position?

22 A. This position, seven years.

23 Q. And prior to that, were you
24 working with Cardinal?

1 A. Yes.

2 Q. When did you first begin to work
3 with Cardinal?

4 A. In '88, April of '88.

5 Q. And have you always been in sales?

6 A. No.

7 Q. Tell me -- just if you can, give
8 me sort of a thumbnail sketch of when you first
9 began and the different positions you've held at
10 Cardinal Health.

11 A. Sure. In April of '88, started
12 out with the company as a -- a janitor of sorts,
13 right, helping to clean the totes and things
14 like that just -- I was going to school, so I
15 got a part-time job there as a janitor.

16 Q. In Wheeling?

17 A. Yes, in Wheeling, in Elm Grove,
18 yes.

19 Q. Okay. How long did you hold that
20 position?

21 A. Just for a few months. And then I
22 got hired full time as a delivery driver, and
23 that went from '88 to '90. And then from '90 to
24 '91, I was a merchandiser.

1 Q. What does a merchandiser do?

2 A. Someone that goes into an
3 independent retail pharmacy and sets up the
4 product that you see on the shelf when you come
5 into the store.

6 Q. Okay.

7 A. And then from '91 to 2000, I was a
8 PBC in the field.

9 Q. And that's a pharmacy business
10 consultant?

11 A. Yes, that's correct.

12 Q. And that takes us to 2000, did you
13 say?

14 A. Yes.

15 Q. All right.

16 A. And from 2000 to 2010, I was
17 promoted into a sales manager position.

18 Q. Give me a brief outline of what
19 your duties and responsibilities were as sales
20 manager.

21 A. Manage the sales team of a group
22 of -- it varied from three to five sales PBCs, a
23 merchandising team, and some -- a position we
24 call the POC position. It's a pharmacy

1 operations consultant that deals with the
2 technology in the pharmacy, those value-added
3 services.

4 Q. And then in 2010?

5 A. For about a year, I became the
6 director of pharmacy transition in the East for
7 Cardinal.

8 Q. And tell me, again just briefly,
9 what your duties and responsibilities were -- as
10 the director of what?

11 A. Pharmacy transition.

12 Q. Pharmacy transition?

13 A. Yes. That's a position where I
14 would help folks valuate the pharmacy, arrive at
15 a fair market value of their pharmacy, and help
16 them buy and sell independent retail pharmacies.

17 Q. All right. And then in 2011?

18 A. I came back to Wheeling and became
19 the director of sales.

20 Q. Who is your director supervisor?

21 A. Chris Lanctot.

22 Q. And approximately how many people
23 do you oversee?

24 A. Twenty-two.

1 Q. Mr. Carney, when, if ever, were
2 you made aware that controlled substances that
3 were distributed by your company, by Cardinal,
4 were being diverted outside of legitimate
5 channels?

6 MR. PYSER: Object to form.

7 Mischaracterizes evidence.

8 You can answer.

9 Q. You can answer.

10 A. Okay. I've never been aware that
11 the medications that we distribute have been
12 diverted outside of there.

13 Q. So in your time from janitor all
14 the way to director of sales, no one at Cardinal
15 has ever made you aware that specifically
16 opioids were being diverted outside of
17 legitimate channels?

18 A. No.

19 MR. PYSER: Object to form.

20 Q. Well, in your roles, your various
21 roles, at Cardinal, you were aware of your
22 responsibilities under the Controlled Substances
23 Act?

24 A. Yes.

1 MS. QUEZON: Okay. And let's look
2 at it if we can. And this is 4915.

3 - - -

4 (Cardinal-Carney Exhibit 1 marked.)

5 - - -

6 THE VIDEOGRAPHER: The time is now
7 9:15. Going off the record.

8 (Pause in proceedings.)

9 THE VIDEOGRAPHER: The time is now
10 9:17. Back on the record.

11 BY MS. QUEZON:

12 Q. Mr. Carney, what I have handed
13 you -- and it's on the screen as well if
14 that's -- if that's helpful -- is 21 C.F.R.
15 Section 1301.74.

16 Are you familiar with this
17 particular law?

18 MR. PYSER: Object to form.

19 A. Familiar? I know -- I know of
20 this. Yes, I've seen it before.

21 Q. Okay. And so let's just go
22 through it very briefly. The registrant -- and
23 so that's anybody who has a DEA registration
24 number, correct?

1 A. Yes.

2 Q. And Cardinal would fall into that
3 category, right?

4 A. Yes.

5 Q. All right. So "The registrant
6 shall design and operate a system to disclose to
7 the registrant suspicious orders of controlled
8 substances. The registrant shall inform the
9 Field Division Office of the Administration" --
10 which is the DEA, correct?

11 A. Yes.

12 Q. -- "in his area of suspicious
13 orders when discovered by the registrant.
14 Suspicious orders include orders of unusual
15 size, orders deviating substantially from a
16 normal pattern, and orders of unusual
17 frequency."

18 Now, Mr. Carney, certainly by '91,
19 1991, when you were a pharmacy business
20 consultant, you would have been at least
21 familiar with the system Cardinal had to
22 disclose suspicious orders, correct?

23 A. I was aware of the system, yes.

24 Q. Okay. What was -- was it -- did

1 it have a name?

2 A. I do not recall the name from
3 then. But I recall that the folks in charge of
4 that area in the compliance department would
5 receive or print out monthly Green Bar reports
6 and report anything as spelled out here to the
7 DEA.

8 Q. And to your recollection,
9 Mr. Carney, that was on a monthly basis?

10 A. I believe so, yes.

11 Q. So not when discovered pursuant to
12 the law but retroactively on a monthly basis?

13 MR. PYSER: Object to form.

14 Calls for a legal conclusion.

15 Q. You can answer.

16 A. I can't say.

17 Q. Okay. Now, a few moments ago when
18 I asked you whether or not you had ever been
19 made aware by any source that controlled
20 substances were being diverted outside
21 legitimate channels. And I believe you told me
22 that you had not been made aware of that; is
23 that right?

24 A. No.

1 MR. PYSER: Object to form.

2 Misstates the testimony.

3 Q. You can answer.

4 A. No.

5 Q. Let's make sure that question and
6 answer is clear.

7 Were you made or were you not made
8 aware that controlled substances were being
9 diverted outside of legitimate channels?

10 MR. PYSER: Objection to form.

11 A. No.

12 MS. QUEZON: Let's go to 1087.

13 Do you have 1087 for me?

14 BY MS. QUEZON:

15 Q. I apologize, Mr. Carney. We're
16 looking for a clean copy of this.

17 MS. QUEZON: It will probably be
18 the last folder you check. It goes to
19 46. There you go. Do you have one for
20 counsel?

21 - - -

22 (Cardinal-Carney Exhibit 2 marked.)

23 - - -

24

1 BY MS. QUEZON:

2 Q. Okay. Mr. Carney, this is a GAO
3 report, the United States General Accounting
4 Office, report to Congress or the Congressional
5 Requesters. This was done in December of 2003.
6 And as you can see there, it's entitled
7 "OxyContin Abuse and Diversion and Efforts to
8 Address the Problem.

9 Do you see that?

10 A. Yes.

11 Q. Is it your testimony today that
12 back in 2003 when you would have been, I guess,
13 a sales manager managing three to five pharmacy
14 business consultants, that no one from Cardinal
15 brought this to your attention?

16 A. I don't recall.

17 MS. QUEZON: Okay. Let's go, if
18 we can, to the first page of the report,
19 and if we can highlight that second
20 paragraph.

21 BY MS. QUEZON:

22 Q. And if it's easier on the screen
23 for you to see, it's been brought up and bolded.
24 And it says, "Several factors may have

1 contributed to the abuse and diversion of
2 OxyContin. The active ingredient in OxyContin
3 is twice as potent as morphine, which may have
4 made it an attractive target for misuse."

5 And then farther on down it says,
6 "Moreover, the significant increase in
7 OxyContin's availability in the marketplace may
8 have increased opportunities to obtain the drug
9 illicitly in some states."

10 Do you see that?

11 MR. PYSER: Object to form. Rule
12 of completion. Not reading the entire
13 thing.

14 A. Yes, I see it.

15 Q. Okay. So as early as December of
16 2003, the GAO is telling Congress that there is
17 an issue with abuse and diversion of OxyContin,
18 and the increase in its availability in the
19 marketplace is leading to diversion.

20 Were you made aware of that?

21 MR. PYSER: Object to form.

22 Misstates evidence. That's explicitly
23 contradictory to what the last sentence
24 in the paragraph says.

1 Q. You can answer the question.

2 A. I -- I don't recall.

3 Q. Was this, to the best of your
4 recollection, this study, this GAO report
5 regarding the diversion and abuse of OxyContin,
6 was this something that you recall discussing
7 with your pharmacy business consultants back in
8 2003?

9 A. No.

10 Q. If we can go to page 7, please.
11 And at the top, Mr. Carney, do see where it says
12 P1.1087?

13 A. Mm-hmm.

14 Q. So we're going to go to P1.1087.7.

15 A. Okay.

16 MS. QUEZON: And if we can bring
17 up that second paragraph, please.

18 BY MS. QUEZON:

19 Q. And here the report discusses that
20 "In early 2000, media reports began to surface
21 in several states that OxyContin was being
22 abused, that is, used for non-therapeutic
23 purposes or for purposes other than those for
24 which it was prescribed and illegally diverted.

1 According to FDA and the DEA, the abuse of
2 OxyContin is associated with serious
3 consequences, including addiction, overdose, and
4 death."

5 Do you recall having any
6 discussions with your pharmacy business
7 consultants that you were overseeing in 2000 to
8 2003 regarding the abuse and addiction that was
9 being caused by OxyContin?

10 MR. PYSER: Object to form.

11 A. I don't recall.

12 Q. Let's go to the very next page,
13 Mr. Carney, if we can.

14 At the -- at the top portion of
15 that, the sentence that begins during, "During a
16 December 2001 Congressional hearing, witnesses
17 from DEA and other law enforcement officials
18 from Kentucky, Virginia, and West Virginia
19 described the growing problem of abuse and
20 diversion of OxyContin."

21 Now, Mr. Carney, in your role as
22 sales manager in the Wheeling, West Virginia
23 distribution center, would that include areas in
24 Kentucky, Virginia, and West Virginia?

1 A. It would West Virginia, yes.

2 Q. Were you aware that law
3 enforcement officials from West Virginia and the
4 DEA had testified in 2001 regarding the abuse
5 and diversion of OxyContin?

6 A. No, I wasn't.

7 Q. Let's go to 35, please.

8 There under that section,
9 Mr. Carney, that -- on the side, it says,
10 "OxyContin's wide availability may have
11 increased opportunities for illicit use."

12 Do you see that?

13 A. Yes, I do.

14 Q. Okay. And that section says, "The
15 large amount of OxyContin available in the
16 marketplace may have increased opportunities for
17 abuse and diversion. Both DEA and Purdue have
18 stated that an increase in a drug's availability
19 in the marketplace may be a factor that attracts
20 interest by those who abuse and divert drugs."

21 Do you see that?

22 A. Yes.

23 Q. Were you aware back when you
24 served as the sales manager in the Wheeling,

1 West Virginia area that at least this report
2 found a link between the amount of drug
3 available in the community to the likelihood of
4 diversion?

5 MR. PYSER: Object to form.

6 Misstates evidence.

7 A. I can't say.

8 Q. Would you agree with that,
9 Mr. Carney? Would you agree that the more drug
10 there is in a particular community, the
11 likelihood of diversion and abuse increases?

12 MR. PYSER: Object to form.

13 A. I would agree if they say "It may
14 have." It may have.

15 Q. Okay. Let's go to the next page,
16 if we can. And you see that graph at the top,
17 that table?

18 A. Yes.

19 Q. All right. Let's just look at it.
20 So were you -- are you aware of when OxyContin
21 actually came out onto the market?

22 A. No.

23 Q. All right. I'll let you know that
24 it is 1996, which you can see from this table

1 here is when they began tracking the number of
2 prescriptions on through to 2002.

3 Do you see that?

4 A. Yes.

5 Q. And in 1996, according to this
6 report, there were 316,786 prescriptions in
7 1996.

8 Do you see that?

9 A. Yes, I do.

10 Q. And can you -- can you read for us
11 how many there were by the year 2002?

12 A. 7,234,204.

13 Q. Now, OxyContin was one of the
14 controlled substances that Cardinal distributed,
15 correct?

16 A. Yes.

17 Q. Okay. So at least by 2003, we
18 know that, as a registrant, Cardinal had the
19 duty under the law to design and operate a
20 suspicious order monitoring system, correct?

21 MR. PYSER: Object to form. Calls
22 for legal conclusion.

23 A. "Duty"? Could you repeat the
24 question, please?

1 Q. Sure. By 2003 -- I'm going to do
2 my best without having to look over here and
3 reread it.

4 By 2003, we know that Cardinal, as
5 a registrant, as a DEA registrant, had a duty
6 under the law to design and operate a suspicious
7 order monitoring system?

8 MR. PYSER: Same objection.

9 A. Yes.

10 Q. And we also know that, at least
11 according to that GAO report, there is an issue
12 with abuse and diversion of OxyContin which is
13 an opioid that Cardinal distributed?

14 A. I don't know -- I don't know that.
15 I don't know that.

16 Q. What part don't you know?

17 A. That at what time there was an
18 issue.

19 Q. Okay. Well, we know that the GAO
20 had reported to Congress that there was an
21 issue, correct?

22 A. Yes.

23 MS. QUEZON: All right. So let's
24 go to 4631.

1 BY MS. QUEZON:

2 Q. It's a new exhibit. Sorry,
3 Mr. Carney.

4 A. Oh, okay.

5 - - -

6 (Cardinal-Carney Exhibit 3 marked.)

7 - - -

8 BY MS. QUEZON:

9 Q. And let me start off by asking
10 you, Mr. Carney, do you know a Mark Mitchell?

11 A. No, I do not.

12 Q. Do you know a Steve Reardon?

13 A. No, I do not.

14 Q. How about Cassi Baker?

15 A. Yes, I know Cassi Baker.

16 Q. How do you know Cassi Baker?

17 A. I know that she's an employee for
18 Cardinal. I --

19 Q. Do you know what she does? I'm
20 sorry.

21 A. I believe she worked in our
22 government -- governmental department --

23 Q. Okay.

24 A. -- in some capacity.

1 Q. So this is an e-mail written by
2 Mr. Mitchell apparently on May 12th of 2005. So
3 this is now a couple years past that GAO report
4 that we just looked at. And the subject line is
5 "Drug Wholesale Advisory Council."

6 Do you know who -- do you know
7 what entity that is?

8 A. No, I don't. Can I have a second
9 to read through here?

10 Q. Absolutely. Take your time and
11 let me know.

12 A. Okay.

13 Q. All right. So it's really the
14 first paragraph that I'm most concerned with.
15 And it begins, "We (three wholesalers) were
16 asked by Greg Jones if we have specific protocol
17 to monitor possible drug diversion (outside of
18 ARCOS) activity with Internet pharmacies or
19 wholesaler accounts. Nobody volunteered an
20 answer. To my knowledge, we do not. If a
21 distributor or Internet pharmacy customer is
22 properly licensed and a legal entity to purchase
23 from us, we typically do not monitor what they
24 purchase or track who they sell to."

1 Were you aware, Mr. Carney, in
2 your role as sales manager in 2005 that, at
3 least according to Mr. Mitchell, there was not a
4 monitoring system to track Internet pharmacy or
5 wholesale distributor orders?

6 A. Yep. Not aware. I was in the
7 independent retail sales side of the business.
8 This Mark Mitchell was on the health system
9 side, the hospital side, a different class of
10 trade than I deal with. I was not aware of
11 this, have not seen this e-mail, or know about
12 this conversation.

13 MS. QUEZON: All right. Let's go
14 to 4598, please, and this will be
15 Exhibit Number 4.

16 - - -

17 (Cardinal-Carney Exhibit 4 marked.)

18 - - -

19 BY MS. QUEZON:

20 Q. And, Mr. Carney, with these e-mail
21 threads --

22 A. Yes.

23 Q. -- they go from the bottom up.

24 A. Yes.

1 Q. So just take your time and let me
2 know when you're --

3 A. Sure.

4 Q. -- ready.

5 A. Okay.

6 Q. All right. So -- and I apologize.
7 I forgot your last response as to your knowledge
8 of Mr. Reardon.

9 Do you know who that is?

10 A. I've heard the name, but I do not
11 know him.

12 Q. Okay. At least according to this
13 e-mail, his title is vice president, quality and
14 regulatory affairs.

15 Do you see that?

16 A. Yes.

17 Q. All right. Now, this is a few
18 months later after Mr. Mitchell's e-mail
19 regarding the Internet pharmacies, and now we're
20 in August of 2005. And Mr. Reardon writes, "DEA
21 has recently initiated investigations of
22 Internet pharmacies who are purchasing excessive
23 quantities -- quantities -- excuse me -- of
24 controlled substances, primarily phentermine and

1 hydrocodone and dispensing these controlled
2 substances without a valid prescription, in that
3 there was not a required doctor-patient
4 relationship."

5 He goes on to talk about the
6 ongoing meetings with the DEA and that the DEA
7 had identified Colorado as a particular Internet
8 pharmacy problem.

9 The last sentence there, the last
10 full sentence, says, "As we go forward, we will
11 be developing criteria which will help identify
12 Internet pharmacy customers and monitor Internet
13 pharmacy customer purchasing patterns."

14 Were you aware, sir, that as late
15 as August of -- the end of August of 2005, that
16 there was not a monitoring program for Internet
17 pharmacy purchases?

18 MR. PYSER: Object to form.

19 Misstates evidence.

20 Q. You can answer.

21 A. Yeah, I wasn't aware.

22 Q. And then at the top, he
23 reiterates, "Once we develop a due diligence and
24 monitoring program, it would become part of the

1 checklist."

2 Sir, this is -- let's see. The
3 Controlled Substances Act came into law in 1971.
4 This is 2005. And as sales manager, you were
5 not aware that there wasn't a due diligence
6 monitoring program for the sale of controlled
7 substances to Internet pharmacies?

8 MR. PYSER: Object to form.

9 A. I was aware that we had a
10 suspicious order monitoring system in place.
11 But, again, I was involved in independent retail
12 pharmacy in West Virginia, Pennsylvania, and
13 Ohio at the time, and I wasn't made aware or
14 didn't have a line of sight on this.

15 MS. QUEZON: Okay. Let's go to
16 4444. 18, yes. This is Exhibit 5, I
17 believe.

18 - - -

19 (Cardinal-Carney Exhibit 5 marked.)

20 - - -

21 BY MS. QUEZON:

22 Q. You are welcome to read as much as
23 you want. I can tell you that the area I'm
24 going to be discussing with you is on page 7.

1 Mr. Carney, are you familiar with
2 regulatory compliance reviews?

3 A. No.

4 Q. Were you aware that Cardinal
5 Health would do regulatory compliance reviews of
6 its distribution centers?

7 A. Yes.

8 Q. Do you see that this appears to be
9 a regulatory compliance review that was done in
10 June of 2006 at the Birmingham, Alabama
11 distribution center?

12 A. Yes, I see that.

13 Q. Okay. So now we are a year from
14 Mr. Reardon's e-mail that, at least according to
15 the e-mail, said that there was not a monitoring
16 program for suspicious orders or excessive
17 purchases from Internet pharmacies. That was in
18 August of 2005. Now we're in June of 2006.
19 Okay?

20 A. Yes.

21 MS. QUEZON: If we can go to page
22 4 of the document.

23 MR. PYSER: Counsel, before we
24 move on on this document, I just want to

1 note for the record this is one of the
2 documents that was part of Cardinal's
3 clawback. We haven't had a chance yet
4 to review this document to determine
5 whether any of these individuals are
6 attorneys. In the event they are and
7 this is a privileged document --

8 MS. QUEZON: We can address it.

9 MR. PYSER: -- we reserve the
10 right --

11 MS. QUEZON: Sure.

12 MR. PYSER: -- to claw it back and
13 address it at that time --

14 MS. QUEZON: Sure, sure, sure.

15 MR. PYSER: -- including
16 potentially striking testimony if it is
17 privileged.

18 MS. QUEZON: Understood. Okay.

19 BY MS. QUEZON:

20 Q. Okay. Let's go to page 4 of the
21 document, and you see where it says "Significant
22 Issues: DEA"?

23 A. Yes.

24 Q. The fourth sentence that begins

1 "There is," do you see that sentence?

2 A. Yes, I do.

3 Q. And at least according to this
4 compliance review done in June of 2006, it
5 reads, "There is no system to determine
6 excessive or suspicious ordering by customers of
7 controlled substance products."

8 Do you see that?

9 A. I do.

10 Q. We can go to page 7. And it's the
11 bottom section entitled "Controlled Substance
12 Order Filling."

13 A. Yes.

14 Q. And at least according to this
15 compliance review at the Birmingham, Alabama,
16 distribution center, the observation is that
17 "There is no system in place to determine
18 excessive purchasing of controlled substance
19 products."

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you see under the Corrective
23 Action, it says what they're going to do,
24 they're going to "Create a system to determine

1 excessive purchasing by customers of controlled
2 substance products and report any excessive
3 purchases to the DEA on a monthly basis."

4 Now, at the beginning of your
5 deposition, sir, I believe you told me that the
6 monitoring system that you were familiar with
7 did just that, reported on a monthly basis,
8 correct?

9 A. Yes.

10 Q. And then it goes on to say at the
11 bottom of that section, "When a narcotic order
12 appears to be excessive, have a supervisor
13 approve the DEA Form 222."

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. So, first of all, going
17 back to the Controlled Substances Act, as we
18 read at the beginning, the system that was to be
19 designed and operated was supposed to identify
20 and report suspicious orders when discovered.

21 Do you recall that?

22 A. Yes.

23 Q. Not retroactively at the end of
24 the month, correct?

1 A. I'm -- I'm not aware of it.

2 Q. So, at least according to the
3 quality compliance review, there is no system in
4 place. Now we're going to create one in June of
5 2006. But we're only going to report on a
6 monthly basis, and if it appears to be
7 excessive, we're going to have a supervisor
8 approve it, not determine whether it should be
9 approved. It says, "Have a supervisor approve
10 it," correct?

11 MR. PYSER: Object to form.

12 A. That's what it says here.

13 MS. QUEZON: Let's go to 4050,
14 please. And you can go to 4050.1 -- or
15 2, I guess. Sorry.

16 - - -

17 (Cardinal-Carney Exhibit 6 marked.)

18 - - -

19 BY MS. QUEZON:

20 Q. Now, I'm going to apologize ahead
21 of time for the printing of this. It doesn't
22 come out very clearly, but perhaps the actual
23 copy will be better. And that's Exhibit 6.

24 All right. Now, this letter was

1 written, at least according to the date on the
2 top of it, September 27th of 2006.

3 Do you see that?

4 A. Yes, I do.

5 Q. All right. So we were just in
6 June when it was determined that there was not a
7 suspicious order monitoring system, at least at
8 the Birmingham distribution center. And now in
9 September, this is a letter from the DEA to
10 Cardinal Health, but it went to all the
11 distributors.

12 Are you familiar with this letter?

13 A. No, I'm not.

14 Q. In 2006, sir, were you still a
15 sales manager in the Wheeling, West Virginia
16 distribution center?

17 A. Yes, I was.

18 Q. And is it your testimony that no
19 one from Cardinal made you aware of this
20 correspondence from the DEA in September of
21 2006?

22 A. Yes.

23 Q. All right. Well, let's go through
24 just a little bit of it.

1 Let's go to .3, 50.3.

2 A. Mm-hmm.

3 Q. In the center there, sir, where it
4 says "The DEA regulations require." Do you see
5 that section?

6 A. Yes, I do.

7 Q. All right. And this is basically
8 just a restatement of that Controlled Substances
9 Act that we looked at at the beginning, right,
10 "The registrant shall design and operate a
11 system to disclose to the registrant suspicious
12 orders of controlled substances."

13 Do you see that?

14 A. Yes.

15 Q. Okay. Down beneath the quotation
16 of the Controlled Substances Act, it says, "It
17 bears emphasis that the foregoing reporting
18 requirement is in addition to and not in lieu of
19 the general requirements under 21 U.S.C. 823(e)
20 that a distributor maintain effective controls
21 against diversion."

22 Do you see that?

23 A. Yes, I do.

24 Q. All right. And let's go back to

1 the first section of the page, .2.

2 At the last sentence of the third
3 paragraph, sir, it says, "This responsibility is
4 critical, as Congress has expressly declared
5 that the illegal distribution of controlled
6 substances has a substantial and detrimental
7 effect on the health and general welfare of the
8 American people."

9 Do you see that?

10 A. I do.

11 Q. All right. Now, the Controlled
12 Substance Act and the DEA's guidance in this
13 letter makes it clear that this responsibility,
14 the responsibility to design and implement a
15 suspicious order monitoring system, is the
16 responsibility of the registrant, correct?

17 A. Yes.

18 Q. It doesn't say you can rely on
19 somebody else --

20 MR. PYSER: Object to form.

21 Q. -- in order to determine whether
22 an order is suspicious? It says the registrant
23 must design and operate, correct?

24 MR. PYSER: Object to form. Calls

1 for legal conclusion.

2 A. I believe so, yes.

3 Q. Okay. And on page 3 -- sorry.

4 Lost my place. Just a moment, please. Sorry.

5 Okay. Yes. In the paragraph that

6 begins "in a similar vein" -- it's the second

7 full paragraph before the end of the page.

8 Do you see that, sir?

9 A. Yes, I do.

10 Q. Okay. "In a similar vein, given

11 the requirement under Section 823(e), that a

12 distributor maintain effective controls against

13 diversion, a distributor may not simply rely on

14 the fact that the person placing the suspicious

15 order is a DEA registrant and turn a blind eye

16 to the suspicious circumstances."

17 Do you see that?

18 A. I do.

19 Q. So simply because a pharmacy or an

20 Internet pharmacy or a pill mill has a DEA

21 registration number does not mean that that in

22 and of itself -- the order is not suspicious,

23 correct?

24 MR. PYSER: Object to form.

1 Q. You can answer.

2 A. Could you repeat the question one
3 more time?

4 Q. I can try.

5 Simply because an entity has a DEA
6 registration number, whether that be a pharmacy,
7 a pill mill, an Internet pharmacy, that in and
8 of itself does not -- shipping to them does not
9 remove the responsibility of monitoring
10 suspicious orders just because they have a
11 registration number, correct?

12 A. Yes.

13 MR. PYSER: Objection to form.

14 A. Yes, it does not.

15 MS. QUEZON: All right. Okay.

16 Let's go to P1.4771, please. It's
17 Exhibit 7, I believe.

18

19 - - -

20 (Cardinal-Carney Exhibit 7 marked.)

21 - - -

22 MR. PYSER: Counsel, for the
23 record, same issue on this document
24 given the Bates numbers and the

1 potential clawback.

2 MS. QUEZON: Okay.

3 MR. PYSER: I think this one
4 raises the same issues as the last. Can
5 we just get a standing objection --

6 MS. QUEZON: Absolutely.

7 MR. PYSER: -- on these Bates
8 numbers that are in that range?

9 MS. QUEZON: Absolutely.

10 MR. PYSER: Thank you.

11 BY MS. QUEZON:

12 Q. Are you -- do you know who Peter
13 Flanagan is?

14 A. No, I do not.

15 Q. Okay. So this is an e-mail from
16 Mr. Flanagan to it looks like a number of
17 different list serves within Cardinal, correct?

18 A. Yes.

19 Q. And it says, "Subject: Local
20 News." And if you look at the page attached to
21 the e-mail, you see that in November of 2006, a
22 pharmacy was raided by DEA agents.

23 Do you see that?

24 A. Yes.

1 Q. And if you'll look over on that
2 article in the third column or the -- yeah,
3 third column where it says, "Most of the
4 medicines were hydrocodone sold as Vicodin and
5 alprazolam sold as Xanax."

6 Do you see that?

7 A. I do.

8 Q. And then there's a statement there
9 that says, "My understanding" -- or, "The site
10 appears to be an online pharmacy. My
11 understanding is they were selling drugs over
12 the Internet."

13 Do you see that?

14 A. I do.

15 Q. Okay. And the e-mail -- if we can
16 go back to that -- says, "All, FYI, please make
17 sure to share this with your accounts who you
18 know are playing in the gray area."

19 Do you see that?

20 A. I do.

21 Q. So two months after the DEA
22 warning, just because you've got a -- they've
23 got a DEA registration number, that does not
24 fulfill your obligation under the Controlled

1 Substances Act. An article's being passed
2 around at Cardinal to let the accounts who are
3 playing in the gray area be aware that the DEA
4 is cracking down, correct?

5 MR. PYSER: Object to form.

6 A. I'm not aware of this situation.
7 Again, I was in West Virginia, Pennsylvania, and
8 Ohio. I've not seen this e-mail. I didn't know
9 this store, and I've never heard of a gray area.

10 MS. QUEZON: All right. Let's go
11 to 4056. I think this is 8. Exhibit 8.

12 - - -

13 (Cardinal-Carney Exhibit 8 marked.)

14 - - -

15 BY MS. QUEZON:

16 Q. Mr. Carney, were you aware of in
17 2007 when a number of the distribution centers
18 for Cardinal were suspended, their licenses were
19 suspended?

20 A. I became aware of it after the
21 fact, yes.

22 Q. Let's look at, if we can -- and
23 this is a DEA announcement in December of 2007.

24 MR. PYSER: Counsel, is this a

1 document that was produced? Because it
2 has a date from March of 2012 but no
3 Bates numbers on it.

4 MS. QUEZON: I don't know the
5 answer to that.

6 BY MS. QUEZON:

7 Q. So if we can look at it. This is
8 an announcement of the suspension of the
9 Lakeland distribution center of Cardinal,
10 correct?

11 A. I believe so, yes.

12 Q. All right. And if we can go to
13 the second paragraph there, the last couple
14 sentences -- or the last full sentence. "In
15 spite of being warned by DEA about the
16 characteristics of rogue Internet pharmacies,
17 this distribution center distributed over
18 8 million dosage units of hydrocodone products
19 between August 2005 and October 2007 to rogue
20 pharmacies."

21 Do you see that?

22 A. I do see it, yes.

23 Q. Okay. So we've gone through some
24 of these documents and at least according to the

1 e-mails and the quality compliance review that
2 was done in Birmingham, there was not a
3 controlled substance monitoring system in place,
4 particularly when it came to rogue Internet
5 pharmacies, correct?

6 MR. PYSER: Object to form.

7 Misstates testimony.

8 A. Yeah, I don't know that. I don't
9 know that.

10 Q. Was the Wheeling distribution
11 center distributing to Internet pharmacies?

12 A. No.

13 Q. Not ever?

14 A. Not that I know of, no.

15 Q. Is it your sworn testimony today
16 that the Wheeling distribution center never
17 distributed any controlled substances to
18 Internet pharmacies?

19 A. Not that I know of, no.

20 Q. Okay. That's different than no.
21 You are not aware of what --

22 A. I'm not aware of any that fell
23 under my purview.

24 MS. QUEZON: Okay. All right.

1 Let's go 4722, please.

2 BY MS. QUEZON:

3 Q. Now, at the same time as -- or
4 around the same time that Lakeland was
5 suspended, you were made eventually aware that
6 other distribution centers' licenses were
7 suspended as well?

8 A. Others -- I became aware of the
9 Florida -- the Florida issue.

10 MS. QUEZON: Can you pull up 4722,
11 please. Do you have that? All right.
12 Well, I want to do it, so let's take it
13 down.

14 What time is it? Let's take a
15 quick break because I do want to get
16 this one -- I don't think I have a clean
17 copy for you. So I'm going to make a
18 clean copy of it, and then we can start
19 back up.

20 MR. PYSER: Okay. How many
21 minutes do you need?

22 MS. QUEZON: Ten minutes maybe.

23 THE VIDEOGRAPHER: The time is now
24 10:02. Going off the record.

1 (Recess taken.)

2 THE VIDEOGRAPHER: Okay. The time
3 is now 10:19. Back on the record.

4 BY MS. QUEZON:

5 Q. All right. Mr. Carney, I believe
6 when we took a break, we had just gone over the
7 fact that the Lakeland distribution center for
8 Cardinal had been suspended.

9 Do you recall that?

10 A. Yes.

11 Q. All right. And were you aware
12 that at the same time, or approximately the same
13 time, that the Lakeland distribution center's
14 registration was suspended, that there were
15 other distribution centers also operated by
16 Cardinal that were suspended?

17 A. I was not.

18 MS. QUEZON: Okay. Let's look, if
19 we can, at Exhibit Number 9.

20 - - -

21 (Cardinal-Carney Exhibit 9 marked.)

22 - - -

23 BY MS. QUEZON:

24 Q. Are you familiar with the fact

1 that Cardinal has an Auburn, Washington
2 distribution center?

3 A. Yes.

4 Q. Were you aware that in December of
5 2007, the Auburn, Washington distribution center
6 was also suspended from distributing controlled
7 substances?

8 A. I was not.

9 Q. Let me know when you have had the
10 opportunity to read through the e-mail. And
11 I've got just a couple questions for you.

12 A. Sure.

13 Got it.

14 Q. All right. If we can start on the
15 second page, which is going to be the first
16 e-mail. You see there it says, "Attached is the
17 latest information regarding the DEA issue at
18 our Auburn facility"?

19 A. Yes.

20 Q. Do you see that?

21 A. Yes, I do.

22 Q. Okay. "Some additional Q&As have
23 been added, including the fact that customers
24 may place larger orders for controlled

1 substances from Auburn until the suspension goes
2 into effect at noon Pacific time on Monday.
3 However, a limiter will be set at 300 percent of
4 their regular order."

5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. So if I'm reading this
8 correctly, the Auburn distribution center is
9 being suspended because it doesn't have
10 effective controls over controlled substances.
11 And in response, just prior to the suspension,
12 they're going to let their pharmacy customers
13 order 300 percent of their regular orders of
14 controlled substances. Am I reading that
15 correctly?

16 MR. PYSER: Object to form.

17 Misstates evidence.

18 A. I'm not privy to what was going on
19 at that distribution center. Again, I work out
20 of the West Virginia distribution center and was
21 not aware of any of this going on.

22 Q. Can we agree that that is
23 reckless, if, in fact, a distribution center is
24 being suspended for not having effective

1 controls and the response is to increase the
2 limit of controlled substances by 300 percent?

3 MR. PYSER: Object to form.

4 Misstates evidence and calls for a legal
5 conclusion.

6 Q. Do you have an opinion, sir?

7 A. I can't say whether it's reckless
8 or not.

9 Q. If we can go to the first page of
10 that e-mail, Mr. Carney. And I just -- and this
11 is Mr. Kurtz writing. And this is now obviously
12 December of 2007. And it begins "Just some
13 thoughts on the Auburn, Washington incident that
14 concern me."

15 Do you see that?

16 A. Yes, I do.

17 Q. Okay. The second full paragraph
18 reads, "The manual process we perform now with
19 the discovery of suspected excessive purchases
20 being left up to the keyer notifying myself, or
21 a picker/double-checker/QC'er questioning an
22 amount being processed seems to leave ample
23 opportunity for failure. A system-generated
24 flag would be a more complete or thorough method

1 of determining spikes or excessive quantities
2 than what we are currently performing."

3 Do you see that?

4 A. I do see it.

5 Q. So apparently in the Auburn,
6 Washington distribution center, they were
7 relying on a picker, double-checker, or QC'er.

8 Can you tell the jury what those
9 terms mean.

10 A. A picker is a person who picks the
11 order. A double-checker and a QC'er is someone
12 who scans the order for accuracy.

13 Q. So they are relying on the picker
14 or the QC'er to make a judgment call about what
15 an excessive order is?

16 A. I can't speak to what went on in
17 that distribution center. I only am privy to or
18 can recall what's gone on in our -- our center
19 out of Wheeling.

20 Q. If we go on to that next
21 paragraph. It says, "As you know I've
22 investigated many accounts, tracked their
23 ordering history, and reached out for guidance
24 and directions. But without 'someone' bringing

1 a suspected excessive quantity order to our
2 attention, many, many more could be going out
3 the door under our noses. I wonder could a
4 similar situation happen in Lakeland and
5 management be questioned 'Why wasn't this
6 discovered?'"

7 Do you see that?

8 A. I see that, yes.

9 Q. Okay. And in December of 2007, I
10 think you mentioned a moment ago that you
11 weren't aware that the Auburn, Washington
12 facility had even been suspended, correct?

13 A. No.

14 Q. So no one from Cardinal brought to
15 your attention as the sales manager in Wheeling,
16 West Virginia, that several distribution centers
17 had been suspended because they did not have
18 effective controls regarding controlled
19 substances?

20 MR. PYSER: Object to form.

21 A. No.

22 Q. Is it something you would have
23 wanted to know?

24 A. I can't say. I can only speak for

1 what went on in our distribution center and the
2 suspicious order monitoring system we had in
3 place at the time.

4 Q. At the beginning of the
5 deposition, Mr. Carney, I asked you when, if
6 ever, it had been brought to your attention that
7 opioids specifically were being diverted out of
8 legitimate channels, and you told me that it had
9 never been brought to your attention; is that
10 right?

11 A. Right, not that I recall.

12 Q. And for the vast majority of this
13 time period, so let's say from 1996, when
14 OxyContin first came on the market, through to
15 the present, you lived in Wheeling, West
16 Virginia?

17 A. Yes.

18 Q. And yet you didn't know that
19 opioids were being diverted outside of
20 legitimate channels?

21 A. I didn't know -- I -- I don't know
22 of any diverted drugs as it pertains to my sales
23 team or any of the orders that -- that we
24 delivered to independent retail pharmacies that

1 I serviced were being diverted.

2 Q. And my question is just a little
3 bit different. My question is, were you ever
4 made aware from any source that controlled
5 substances, particularly opioids, were getting
6 diverted -- whether they were yours or not or
7 somebody else's, that's not part of the
8 question. The question is, were you aware that
9 opioids were being diverted outside of
10 legitimate channels?

11 MR. PYSER: Object to form.

12 A. I became aware of the opioid
13 epidemic. I remember -- I recall, you know,
14 becoming aware of that sometime in 2008, 2009.
15 So, yes, I was aware through the media that
16 these things were happening, that somehow these
17 pills were getting into the wrong hands or being
18 abused by the wrong folks, yes.

19 Q. Okay. But you were not made aware
20 prior to that, so you think maybe around 2008.
21 Here we are right now in 2007 when multiple
22 distribution centers of Cardinal's are being
23 suspended for that very reason, not having
24 effective controls over controlled substances,

1 and no one from Cardinal made you aware of that
2 at the time?

3 MR. PYSER: Object to form and
4 misstates evidence.

5 Q. Am I correct?

6 A. I can't say how I became aware of
7 those situations happening in Florida. I just
8 know that I knew or found out or heard about
9 them.

10 Q. Of the one Lakeland facility?

11 A. Of the Lakeland facility.

12 Q. Any of the other distribution
13 centers?

14 A. No, no.

15 Q. Okay. During this period of time,
16 Mr. Carney, 2007 time frame, the end of 2007
17 when these distribution centers were suspended,
18 when their DEA registration was suspended, was
19 Mr. Lanctot your supervisor?

20 A. No.

21 Q. Who was your supervisor then?

22 A. In 2007 I would have been a sales
23 manager, and the person that sat in the position
24 that I hold now was a gentleman named

1 Stephen Gates.

2 Q. Okay. And to the best of your
3 recollection, there wasn't a conference call
4 between your supervisor and the other sales
5 managers or the PBCs, the pharmacy business
6 consultants, regarding the suspensions of these
7 distribution centers?

8 A. There may have been a
9 conversation. I may have become aware of it
10 through a conference call, but I can't say for
11 sure.

12 Q. Okay. You didn't receive a memo
13 outlining the failures or at least the alleged
14 failures, what DEA said they did wrong, you
15 didn't receive any packets of information as far
16 as, "Hey, the DEA says we messed up and here's
17 how we messed up. We need to get some
18 corrective action"?

19 MR. PYSER: Object to form.

20 You can answer.

21 A. Not that I remember.

22 MS. QUEZON: Let's go to 4008,
23 please. And this will be Exhibit 10.

24 - - -

1 (Cardinal-Carney Exhibit 10 marked.)

2 - - -

3 BY MS. QUEZON:

4 Q. Now, Mr. Carney, a few moments ago
5 we looked at a correspondence from the DEA that
6 was sent to Cardinal in 2006.

7 Do you remember that?

8 A. Yes.

9 Q. And I believe your testimony was
10 that it had not been forwarded to you and you
11 had not been provided with that correspondence
12 at least to the best of your recollection?

13 A. Correct.

14 Q. Okay. So, Mr. Carney, as you can
15 see, this now is September of 2007, so
16 approximately a year later.

17 A. Mine says December 27, 2007.

18 Q. Yes. Did I say that wrong? I'm
19 sorry. I'll start over.

20 So I believe the date of this
21 correspondence from the DEA to Cardinal is
22 December 27, 2007, correct?

23 A. Yes.

24 Q. All right. And just so the record

1 is clear, the first correspondence from the DEA
2 was in September of 2006. So this is
3 approximately a year later there's another
4 correspondence going out to the distributors.

5 Do you see that?

6 A. This is a separate letter than the
7 other one is what you're saying?

8 Q. Yes, sir.

9 A. Yes, I see that.

10 Q. Okay. All right. And if we can
11 go to the third -- if you'll look at the third
12 paragraph, Mr. Carney, that begins with the
13 sentence, "The regulation also requires."

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. And it basically states
17 what I think you and I kind of discussed before,
18 "The regulation also requires that the
19 registrant inform the local DEA division office
20 of suspicious orders when discovered by the
21 registrant."

22 Do you see that?

23 A. I do.

24 Q. "Filing a monthly report of

1 completed transactions, for example, excessive
2 purchase report or high unit purchases, does not
3 meet the regulatory requirement to report
4 suspicious orders."

5 Do you see that?

6 A. Yes, I do.

7 Q. Did anyone from Cardinal provide
8 you with this letter?

9 A. Not that I recall.

10 Q. And I think -- I think we
11 discussed a little while ago that the suspicious
12 monitoring program that you recalled did exactly
13 that, they sent monthly --

14 THE VIDEOGRAPHER: Counsel on the
15 phone, could you guys put yourself on
16 mute, please.

17 Q. Sorry for that interruption.

18 I think that the -- what we
19 discussed earlier in your deposition, sir,
20 regarding the suspicious order monitoring
21 program that you recalled did just that, they
22 sent a monthly report of excessive purchases; is
23 that correct?

24 MR. PYSER: Object to form.

1 A. Yes, initially. However, the
2 process did evolve over time and transition as
3 more technology was brought online. So I'm not
4 matching up the timeline exactly here. It may
5 have become more frequent as that technology
6 came online. I'm not sure when it did.

7 Q. Okay. Well, we know that at least
8 by December of 2007, the distributors,
9 specifically Cardinal, is being told "Just
10 telling us that you had excessive orders for the
11 month doesn't cut it," right?

12 MR. PYSER: Object to form.

13 A. I see that, yes.

14 Q. Okay.

15 A. This is not the same letter as
16 before --

17 Q. No, sir.

18 A. -- where he's reiterating?

19 Q. No, sir, it's not.

20 All right. If we can go to the
21 next page. And, again, the second paragraph
22 there, it reiterates, "When reporting an order
23 as suspicious, registrants must be clear in
24 their communications with the DEA that the

1 registrant is actually characterizing an order
2 as suspicious. Daily, weekly, or monthly
3 reports submitted by a registrant indicating
4 excessive purchases do not comply with the
5 requirement to report suspicious orders even if
6 the registrant calls such reports suspicious
7 order reports."

8 Do you see that?

9 A. Yes.

10 Q. And then just below that, the next
11 paragraph reads, "Lastly, registrants that
12 report" -- "routinely report suspicious orders
13 yet fill them without first determining that
14 order is not being diverted into other than
15 legitimate medical, scientific, and industrial
16 channels may be failing to maintain effective
17 controls against diversion."

18 Do you see that?

19 A. Yes, I do.

20 Q. All right. To the best of your
21 recollection, were the guidelines set out by the
22 DEA in this letter communicated to you in
23 December of 2007?

24 A. What I recall was that if an order

1 was deemed suspicious, that it would be held
2 until -- held and then reviewed and then
3 determine whether it could be released or not.

4 Q. And when was that system put in
5 place because --

6 A. I believe right around this
7 timeline; '07, '08. I can't be sure, but I
8 believe right around this timeline.

9 Q. All right. And prior to that time
10 frame, 2000- -- 2007, 2008, do you recall the
11 details of whatever suspicious monitoring
12 program you believe Cardinal had?

13 A. The details? Beyond the reporting
14 to the DEA on a monthly basis based on
15 frequency, pattern, size of orders, not beyond
16 those details.

17 Q. Who was the regulatory person in
18 Wheeling back in 2007?

19 A. I can't say for sure. It may have
20 been Paul Exley. It may have been a gentleman
21 named Ken Cunningham.

22 MS. QUEZON: All right. Let's go,
23 if we may, to 4230.

24 - - -

1 (Cardinal-Carney Exhibit 11 marked.)

2 - - -

3 BY MS. QUEZON:

4 Q. So my first question, Mr. Carney,
5 is, have you ever seen this Settlement and
6 Release Agreement and Administrative Memorandum
7 of Agreement between the DEA and Cardinal
8 Health?

9 A. Not that I recall.

10 Q. If you turn to page 41 of that
11 document.

12 MR. PYSER: Counsel, which page
13 number are you using?

14 MS. QUEZON: I'm sorry. P1 -- at
15 the top, the 41 at the top.

16 MR. PYSER: Thank you.

17 MS. QUEZON: Mm-hmm.

18 BY MS. QUEZON:

19 Q. And I'm really just showing you,
20 for purposes of the date, you see that it was
21 signed on September 30th of 2008?

22 A. Yes, I do.

23 Q. All right. To the best of your
24 recollection, did anyone from Cardinal provide

1 this Administrative Memorandum of Agreement to
2 you as the sales manager of the Wheeling, West
3 Virginia distribution center in or around
4 September of 2008?

5 A. Not that I recall.

6 Q. If you look at the very first
7 page, Mr. Carney. And I know that you recalled
8 that there was a -- you recalled hearing
9 something about the Lakeland facility having an
10 issue with the DEA, correct?

11 A. Yes.

12 Q. All right. And we talked about
13 Auburn, and you weren't familiar with that one.
14 But as you see here, there are two other
15 distribution centers that received an Order to
16 Show Cause and Immediate Suspension or an Order
17 to Show Cause at least, which were Auburn,
18 Washington; Lakeland, Florida; Swedesboro, New
19 Jersey; and Stafford, Texas.

20 Do you see that?

21 A. I do see that.

22 Q. Were you made aware by anyone from
23 Cardinal that actually four distribution centers
24 had received orders to show cause back in

1 November and December of 2007 and January of
2 2008?

3 A. I was not.

4 Q. If you go to the next page,
5 Mr. Carney, at the very -- paragraph 7 at the
6 top. And you see that the "DEA also alleges
7 that Cardinal failed to maintain effective
8 controls against the diversion of controlled
9 substances at its distribution facilities
10 located at the following addresses." And it's
11 McDonough, Georgia; Valencia, California; and
12 Denver, Colorado.

13 Do you see that?

14 A. I do.

15 Q. Were you made aware in the late
16 part of 2007 and the early part of 2008 that
17 seven distribution centers that were operated by
18 Cardinal it was alleged had failed to maintain
19 effective controls against diversion of
20 controlled substances?

21 MR. PYSER: Object to form.

22 A. I was not.

23 MS. QUEZON: Let's go to 4230 --

24 I'm sorry. 4230.16. 16.

1 BY MS. QUEZON:

2 Q. And these are the actual Order to
3 Show Cause and Immediate Suspension of
4 Registration that were filed by the DEA. And if
5 we go -- if we look at paragraph 1 and 2, you
6 see that this was -- this one is for the Auburn,
7 Washington facility. And you see where the DEA
8 says that they "failed to maintain effective
9 controls against diversion of a particular
10 controlled substance."

11 Do you see that?

12 A. Yes.

13 Q. Okay. And if we go to the next
14 page, Mr. Carney, under paragraph b at the top.
15 It says, "Despite the substantial guidance
16 provided to Respondent by the DEA regarding
17 identifying rogue pharmacies such as Horen's
18 Drugstore, and despite the public information
19 readily available to Respondent regarding
20 Horen's Drugstore's association with rogue
21 Internet pharmacy websites, Respondent
22 repeatedly supplied Horen's Drugstore with
23 excessive amounts of hydrocodone."

24 Do you see that?

1 A. I do see it.

2 Q. Okay. And to the best of your
3 recollection, no one from Cardinal brought to
4 your attention the facts and circumstances
5 surrounding the Order to Show Cause and
6 Immediate Suspension of the Auburn, Washington
7 distribution center; is that correct?

8 A. I was not aware.

9 Q. If we can go to 4230.20.
10 Now, this is the one as far as
11 Lakeland. And you do recall hearing something
12 about this one, correct?

13 A. Yes, I do.

14 Q. All right. If we could look at
15 paragraph 2. Once again, DEA alleges the
16 failure to maintain effective controls against
17 the diversion of a particular controlled
18 substance. And then it goes on to say, "From
19 August 2005 through October 2007, Respondent
20 distributed over 8 million dosage units of
21 combination hydrocodone products to customers
22 that it knew or should have known were diverting
23 hydrocodone into other than legitimate medical,
24 scientific, and industrial channels."

1 If you go to the next page
2 under -- on 21. And you'll see in paragraph 3,
3 that the "pharmacies distributed millions of
4 dosage units of hydrocodone based on
5 illegitimate prescriptions originating from
6 rogue Internet pharmacy websites."

7 Do you see that?

8 MR. PYSER: Object to form.

9 Misstates.

10 A. I see that, yes.

11 Q. I understand that you recall being
12 made -- or somehow hearing about the Lakeland
13 distribution center suspension.

14 Did anyone from Cardinal share
15 with you the specifics as far as why the DEA had
16 suspended their registration number?

17 A. No.

18 Q. If we can go to page 4230.25.

19 This is the Order to Show Cause
20 and Immediate Suspension of Registration for the
21 distribution center located in Swedesboro, New
22 Jersey. Paragraph 2, again, the failure to
23 maintain effective controls against the
24 diversion of controlled substances.

1 And then in paragraph 3, "Some Of
2 respondent's largest purchasers of combination
3 hydrocodone products were pharmacies engaged in
4 a scheme to distribute controlled substances
5 based on purported prescriptions that were
6 issued for other than a legitimate medical
7 purpose and by physicians acting outside the
8 usual course of professional practice. These
9 pharmacies distributed millions of dosage units
10 of hydrocodone based on illegitimate
11 prescriptions originating from drug distribution
12 websites."

13 Do you see that?

14 A. Yes.

15 Q. Did anyone from Cardinal share
16 with you the details of why the DEA had
17 suspended the registration of the Swedesboro,
18 New Jersey distribution center?

19 MR. PYSER: Object to form.

20 A. The details of the allegations,
21 no.

22 Q. Did you even know that Swedesboro
23 had been suspended?

24 A. No.

1 Q. Okay. Let's go though 4230.30,
2 please.

3 And this is the Order to Show
4 Cause issued to the Stafford, Texas distribution
5 center.

6 And in paragraph 2, it indicates,
7 "Registrant distributed massive amounts of
8 particular controlled substances to retail
9 pharmacy customers without maintaining adequate
10 controls to detect and prevent the diversion of
11 controlled substances. For example, from
12 January 27 through September" -- I'm sorry --
13 "from January 2007 through September 2007,
14 Registrant distributed nearly 21 million dosage
15 units of hydrocodone to its retail pharmacy
16 customers. Despite distributing such a large
17 quantity of hydrocodone, a highly addictive and
18 widely abused Schedule III controlled substance,
19 Registrant did not have sufficient policies and
20 procedures in place to detect and prevent
21 diversion, did not execute those policies and
22 procedures that were in effect, and failed to
23 provide its employees with the necessary
24 training and resources to detect and prevent

1 diversion."

2 Did anyone from Cardinal make you,
3 the sales manager of the Wheeling distribution
4 center, aware of the Order to Show Cause that
5 had been issued and the facts and circumstances
6 that led to the Order to Show Cause at the
7 Stafford, Texas facility?

8 MR. PYSER: Object to form.

9 A. Not that I recall, no.

10 Q. Let's go to page 4230.37.

11 This section is entitled "Terms
12 and Conditions."

13 First of all, were you aware that
14 Cardinal agreed and did pay \$34 million as a
15 part of the settlement agreement?

16 A. For these particular things, no.
17 But was I aware that an agreement was reached
18 that we had admitted no guilt? I believe so,
19 yes.

20 Q. Were you made aware of what
21 Cardinal agreed to do going forward? Was this
22 settlement agreement and the terms and
23 conditions provided to you as the sales manager
24 at the Wheeling distribution center as far as

1 what promises were made by Cardinal what they
2 were going to do going forward?

3 A. What we were going to do going
4 forward from the time that this settlement was
5 reached?

6 Q. Yes, sir. Any promises that they
7 made to the government; "Look, hey, you know,
8 maybe we can do some things better. Here's what
9 we're going to do in the future."

10 Did anybody provide you with the
11 terms and conditions or a copy of the settlement
12 agreement so that you were aware of what
13 Cardinal was promising to do in the future?

14 MR. PYSER: Object to form.

15 A. I do not recall hearing that we
16 were going to do anything other than what we
17 were already doing.

18 MS. QUEZON: Let's take a look now
19 at P1.4923.

20 THE WITNESS: P1 --

21 MS. QUEZON: I'm sorry. It's
22 going to be handed to you.

23 THE WITNESS: Okay.

24 - - -

1 (Cardinal-Carney Exhibit 12 marked.)

2 - - -

3 BY MS. QUEZON:

4 Q. Mr. Carney, what we have now
5 marked as Exhibit 12 to the deposition is a
6 composite exhibit that are the total dosage
7 units of oxycodone and hydrocodone that were
8 shipped by Cardinal to Cuyahoga County, Ohio,
9 the total MME of oxycodone and hydrocodone
10 shipped by Cardinal to Cuyahoga, the total
11 dosage units of oxycodone and hydrocodone
12 shipped by Cardinal to Summit County, Ohio, and
13 the total MME of oxycodone and hydrocodone
14 shipped by Cardinal to Summit County, Ohio. And
15 then there's a combination one.

16 A. Yes, I see that.

17 Q. Do you see that?

18 A. Yes, I do.

19 Q. Okay. Now, chronologically what
20 we've gone through -- I think we just looked at
21 the Memorandum of Agreement that was signed in
22 September of 2008.

23 Do you recall that?

24 A. Yes.

1 Q. All right. So let's look, if we
2 can, on our charts at the year January 2008 to
3 January 2009 on our chart. Do you see -- do you
4 see those two years?

5 A. Yes, I do.

6 Q. Okay. And do you see the
7 corresponding total dosage units that were
8 shipped by Cardinal into Cuyahoga during that
9 year time frame?

10 A. I believe so, yes.

11 Q. And it looks like --

12 MR. PYSER: I'm just going to put
13 on the record an objection to this
14 exhibit since we can't verify the
15 provenance of it or the numbers behind
16 it.

17 MS. QUEZON: That's fine.

18 BY MS. QUEZON:

19 Q. If we look at oxycodone for that
20 period of time, it looks like we're somewhere in
21 the 600,000 to 800,000 dosage units during that
22 year period of time.

23 Does that look about right to you?

24 A. In 2008?

1 Q. Yes.

2 A. Yes.

3 Q. Yes. And then if we look at the
4 hydrocodone for that same year, we're somewhere
5 between 800,000 and a million. Couple of months
6 go over a million, correct?

7 A. It's not -- it's not where she's
8 pointing at, but over here, yes.

9 Q. Okay.

10 A. Or whoever is pointing at that.

11 Q. Yeah. It's Zach.

12 A. We're talking 2008's for both
13 oxycodone and hydrocodone?

14 Q. Correct.

15 A. Got it. Yes.

16 MS. QUEZON: All right. Let's go
17 to P1.4052, please.

18 - - -

19 (Cardinal-Carney Exhibit 13 marked.)

20 - - -

21 BY MS. QUEZON:

22 Q. All right. And just by way of
23 reminder, Mr. Carney, the suspensions of the
24 Cardinal distribution centers in Auburn,

1 Stafford, Lakeland, and Swedesboro occurred in
2 at the end of 2007, beginning of 2008.

3 Do you remember that?

4 A. I believe so, yes.

5 Q. And then we looked at the
6 Memorandum of Agreement that was entered into by
7 Cardinal and the DEA in September of 2008.

8 Do you remember that?

9 MR. PYSER: Objection. Asked and
10 answered.

11 A. Yes.

12 Q. Okay. And I'm just giving us some
13 chronological guidelines here.

14 All right. So now we have a new
15 standard operating procedure for it looks like
16 the sales department, "Anti-diversion Alert
17 Signals."

18 Do you see that?

19 A. I don't know that I would classify
20 it as new.

21 Q. I wasn't classifying it that way.
22 The actual document itself classifies it that
23 way. If you look at the top where it says
24 "Issue Date." And then right underneath "Issue

1 Date," it tells you when it was previously
2 issued.

3 Do you see that?

4 A. Yes.

5 Q. And you see that, at least
6 according to the document itself, it says that
7 it's a new SOP, correct?

8 A. That's what it says here.

9 Q. Okay. And if we can go to page 3
10 of the document -- actually, I'm so sorry. Go
11 back to that first page again. My bad.

12 Now, under "4.0 Policy," it says,
13 "The anti-diversion team, within QRA, Supply
14 Chain Integrity, is responsible for the
15 continuous reporting of threshold events
16 identified during the execution of the
17 suspicious order monitoring program."

18 Do you see that?

19 A. I do.

20 Q. All right. And it says it
21 encompasses two components, "Internal reports
22 that assist in the evaluation of threshold
23 events; and 2) Communication of the threshold
24 events to the sales department."

1 Is that right?

2 A. Yes.

3 Q. And you would be the sales
4 department?

5 A. Yes.

6 Q. Okay. And then underneath that
7 under "Definitions," it talks about held orders.

8 Do you see that?

9 A. Yes.

10 Q. All right. And I think you
11 mentioned that to me before. That was your
12 memory of part of the suspicious order
13 monitoring system was the held orders, correct?

14 A. Yes. At some point, yes.

15 Q. Okay. And we know that at least
16 it's being defined here in what they are calling
17 a new standard operating procedure, issue date
18 of December 22, 2008, correct?

19 MR. PYSER: Object to form.

20 A. Yes.

21 MS. QUEZON: All right. Now let's
22 go to page 3. Sorry. And if we can
23 go -- if we can highlight or bring
24 forward the portion of it that starts

1 with "More specifically, this report."

2 A. I'm sorry. What page are we on
3 again?

4 Q. Page 3, Mr. Carney.

5 A. Page 3. Okay. I'm sorry.

6 Q. And it's like --

7 A. "More specifically" second
8 paragraph?

9 Q. Yes, exactly. Right there.
10 Okay. And underneath that
11 paragraph, it lists three bullet points. So
12 there's a watch list, which is a 5 percent
13 increase, at least \$2,500 of controlled
14 substance, list one chemical orders. A yellow
15 flag, which is a 10 percent increase, at least
16 5,000 of controlled substance, list one chemical
17 orders. And then a red flag, which is a
18 15 percent increase of a controlled substance,
19 correct?

20 A. I see that, yes.

21 Q. In your position as sales manager,
22 were you made aware of these bullet points, the
23 watch list, the yellow flag, and the red flag,
24 and what you were to do in those circumstances?

1 A. It was my expectation or our
2 expectation that even prior to this, if we
3 noticed any of these types of things, that we
4 were to report them up through QRA. But this
5 became a more -- again, the evolution of our
6 suspicious order monitoring process.

7 Q. So you were familiar with both the
8 watch list, the yellow flag, and the red flag,
9 and what your responsibilities were under those
10 circumstances?

11 A. Yes.

12 MS. QUEZON: Okay. Let's go to
13 4971. Do you have 4971? If we can go
14 to the second page, I believe. Yes.

15 - - -

16 (Cardinal-Carney Exhibit 14 marked.)

17 - - -

18 BY MS. QUEZON:

19 Q. All right. This is from the CDC.
20 And on the second page, Table 1, do you see
21 where it indicates this is the "Total number and
22 rate of opioid prescriptions dispensed in the
23 United States from 2006 until 2017."

24 Do you see that?

1 A. I do.

2 Q. All right. And we are now in
3 the -- let's see. That standard operating
4 procedure that we just looked at was established
5 in December 22nd of 2008, correct?

6 A. I don't know that it was
7 established then.

8 Q. That's the date on the standard
9 operating procedure that we just looked at,
10 right?

11 A. Yes.

12 Q. Okay. So let's look at the total
13 number of prescriptions in 2008 for opioids.

14 And can you -- can you read into
15 the record according to the CDC what the -- what
16 the total number of prescriptions were for that
17 year.

18 A. 237,860,213.

19 MS. QUEZON: All right. Now,
20 let's go to 4083.

21 - - -

22 (Cardinal-Carney Exhibit 15 marked.)

23 - - -

24

1 BY MS. QUEZON:

2 Q. Now, this standard operating
3 procedure is entitled "Process to Establish SOM,
4 Suspicious Order Monitoring, Threshold Limits."

5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. Now, this one has got a few
8 issue dates on it. It looks like originally you
9 can see 12/22/08.

10 Do you see that with a line
11 through it?

12 A. Yes.

13 Q. And then there's another date, it
14 looks like, of January of 2010 and maybe April
15 of 2013.

16 Do you see those?

17 A. I see January 2010. And, yes, it
18 looks like -- it's cut off, but it says 02 -- I
19 believe April of 2013, yes.

20 Q. Okay. But the earliest issue date
21 we've got is that December 22, 2008, which
22 corresponds to the other SOP that we looked at,
23 correct? It's the same issue date?

24 A. Yes.

1 Q. Okay. Let's go to the second
2 page, please, and the first paragraph. So this
3 says, "Extract and format list of customers and
4 historical sales data."

5 Do you see that?

6 A. Yes.

7 Q. All right. So, "Compile all
8 historical sales for all monitored items for all
9 customers over the most recent 12-month period
10 of time. The 12-month time period should be
11 based on the date the product was shipped."

12 So in order to establish a
13 threshold, we're going to look at the past 12
14 months. So here we're in December of 2008.
15 We're going to look back to December of 2007.
16 So basically the calendar year of 2008, if we
17 were going to set a threshold on the very day
18 that the SOP was first issued.

19 A. From December of '07 to December
20 of '08, that would be the 12-month period.

21 Q. Okay.

22 A. Yes.

23 Q. And then if you go to the next
24 page, we're basically going to take the mean of

1 the year of sales for that customer, historical
2 sales. And then under Section 6, we're going to
3 multiply that by 3.

4 Do you see that for hydrocodone,
5 oxycodone, et cetera?

6 A. In Section 6, each segment by a
7 factor of 3, 5, or 8.

8 Q. Okay. So we're taking the monthly
9 average or mean of what the historical ordering
10 data has been, and in order to set their
11 threshold, we're going to multiply their average
12 by 3, correct?

13 MR. PYSER: Object to form.

14 A. That's what it says here, but this
15 was all part of the QRA department. I wasn't
16 involved in the statistical data or the
17 formulas -- creating the formulas for
18 determining.

19 Q. Were you aware as the sales
20 manager of the Wheeling facility that in order
21 to set a threshold for one of your customers,
22 they were taking the monthly average and
23 figuring out what their historical data
24 reflected as far as what they usually ordered,

1 but in order to set a threshold, we're going to
2 multiply that number by 3?

3 MR. PYSER: Object to form.

4 A. I wasn't aware of the particular
5 math, no. But I was aware that their thresholds
6 were based on their usage --

7 Q. Times 3?

8 A. -- or a percentage of their usage.

9 Q. Times 3 --

10 MR. PYSER: Object to form.

11 Q. -- according to this?

12 A. According to what I see now, yes.

13 MS. QUEZON: Okay. So let's go to
14 4766, please. Actually, before we do
15 that, let's just go -- nah. Let's just
16 go to 4766.

17 MR. GRAY: You've got a new
18 assistant over here. Bear with me.

19 MS. QUEZON: It's pretty big. It
20 looks like this, Arch (indicating).

21 MR. GRAY: Sorry.

22 MS. QUEZON: That's okay. We've
23 got to mark it.

24 There's only one in here. I'll

1 give you mine if you want it.

2 - - -

3 (Cardinal-Carney Exhibit 16 marked.)

4 - - -

5 MR. PYSER: Do you have another
6 copy there?

7 MS. QUEZON: I don't. I'm so
8 sorry. I think that's the only one we
9 have. I can get you one. Is that all
10 right?

11 MR. PYSER: Yeah. We can proceed.

12 MS. QUEZON: Okay.

13 MR. PYSER: He might take a minute
14 to look at it.

15 MS. QUEZON: Yeah.

16 BY MS. QUEZON:

17 Q. So, Mr. Carney, I know you
18 probably haven't had the opportunity to read
19 through every single page. But are you familiar
20 with this training?

21 A. I do recall it, yes.

22 Q. Do you know whether you actually
23 participated in this training?

24 A. Yes, I did.

1 Q. Okay. So let's go, if we can, to
2 page 3. And, basically, the objectives here are
3 to understand the mission of the DEA and
4 Cardinal's obligations under the Controlled
5 Substance Act and accompanying regulations,
6 understand Cardinal Health's enhanced suspicious
7 order monitoring program, recall and understand
8 DEA handling, recordkeeping, reporting
9 requirements, connect anti-diversion with sales
10 and operations, and understand your
11 responsibility.

12 And as a part of the sales team,
13 you actually went through this training?

14 A. Yes, I did.

15 Was there a date?

16 Q. You know, the -- go back to the
17 very first page. The only date -- and it's at
18 the -- below that --

19 A. 2008?

20 Q. 2008. Do you see that at the
21 bottom?

22 A. But that might be just for that
23 PowerPoint.

24 Q. Yeah. Well, let me ask you,

1 Mr. Carney. Do you recall when you went through
2 this training?

3 A. Probably around 2008 --

4 Q. Okay.

5 A. -- as I recall, yeah.

6 Q. I understand.

7 All right. If we could go to page
8 8.

9 All right. At the top there, you
10 see under the DEA, under "management and
11 structure," it says that there are "400
12 diversion investigators in the world. Over
13 1 million registrants for them to both service
14 and investigate."

15 And then it says, "Chokepoint
16 view - all prescription drugs go through
17 wholesale distributors."

18 Do you see that?

19 A. I do.

20 Q. And at the bottom of that page, it
21 says, "Distributors are viewed as a chokepoint
22 for the supply chain. The agency may not have
23 total visibility to pharmacies but the
24 distributor does."

1 Do you see that?

2 A. I do.

3 Q. And do you agree, sir, that the
4 distributors are the chokepoint for the supply
5 chain?

6 A. The term "chokepoint" -- can you
7 define that for me?

8 Q. I didn't go to the training.

9 MR. PYSER: Object to form.

10 Q. Do you know what is meant by
11 "chokepoint"?

12 A. Small enough to get your hands
13 around, I guess, something like that.

14 Q. And I guess it's defined here and
15 says -- I guess the last part of that sentence
16 says, "The agency may not have total visibility
17 but the distributor does."

18 Right?

19 A. That's what it says, yes.

20 Q. Now, if you'll turn to the next
21 page. And we've gone over this a little bit in
22 those -- on the letters that the DEA had sent to
23 Cardinal. I know that you had not been provided
24 them. But here in the training you received, it

1 basically reiterates, "Reporting suspicious
2 orders to DEA does not relieve a distributor of
3 the responsibility to maintain effective
4 controls to be prevent diversion." The DEA told
5 this industry if you report suspicious orders,
6 yet fill them, you're failing to maintain
7 effective controls to prevent diversion. And
8 then they mention the warning letter that we
9 went over earlier in the deposition.

10 Do you see that?

11 A. Yes.

12 Q. Okay. At the bottom of this page,
13 it states, "This is how the industry finds
14 itself in the situation it is in today. We all
15 thought we were doing good enough but we
16 weren't."

17 Do you agree with that statement?

18 MR. PYSER: Object to form.

19 A. I don't know that I agree with "we
20 weren't." I thought that we out of the Wheeling
21 division were, but -- so, no, I don't completely
22 agree with that statement.

23 Q. Okay. Now, you were the sales
24 manager at the Wheeling facility during this

1 period of time.

2 Let's go to page 15, please. And
3 this has to do with the responsibility,
4 recognition, and prevention.

5 A. Mm-hmm.

6 Q. And there it says it's everyone's
7 responsibility. Do you agree with that
8 statement?

9 A. I do.

10 Q. Under -- just directly underneath
11 that, it says, "Sales force - you are the boots
12 on the ground and the front line of defense."

13 Do you agree with that statement?

14 A. The overall training was -- the
15 way I perceived it was in a sense to enlist us
16 in the fight.

17 Q. And at the bottom of the page,
18 sir, it says, "Sales - eyes and ears."

19 Do you know what that means?

20 A. Yes.

21 Q. What does it mean?

22 A. That we were to look for a certain
23 set of activities that could be perceived as out
24 of the normal, and then report that up through

1 QRA. Not that we hadn't always had that
2 responsibility, but this was --

3 Q. Emphasizing it?

4 A. -- emphasizing it.

5 Q. Yes, sir. Okay.

6 And to the best of your
7 recollection, it would have been probably
8 sometime in 2008 when this training was given?

9 A. I believe so, yes. But I can't be
10 sure. But I believe so, yes.

11 MS. QUEZON: Okay. Let's go to
12 P1.4118.

13 - - -

14 (Cardinal-Carney Exhibit 17 marked.)

15 - - -

16 BY MS. QUEZON:

17 Q. Now, we've talked a little bit
18 about the setting of thresholds, which
19 understanding that in sales, you weren't the one
20 setting those thresholds.

21 A. Right.

22 Q. But if a customer were close to
23 reaching a threshold or going over a threshold,
24 would you then become involved?

1 A. At some point, we became aware of
2 that in the evolution of the process, yes.

3 Q. All right. And, again, this is an
4 e-mail, so we work from the back. And just let
5 me know when you've had an opportunity to look
6 over it.

7 A. Sure.
8 Got it.

9 Q. Okay. All right. So it looks
10 like if we start from the back, there's an
11 account, Louis & Clark. It's a pain clinic.
12 And they need oxycodone and OxyContin, and
13 Roxicet, and they keep "coming back limited."
14 What does "limited" mean?

15 A. I'm not aware of this situation or
16 this particular store.

17 Q. Are you familiar with limiters?

18 A. It may mean -- it may be in
19 regards to thresholds.

20 Q. Okay. And the next e-mail in the
21 thread from Russell Trammell says, "Andy, the
22 account below is a pain clinic and has a
23 desperate need for these meds. How can I tell
24 when this account will be able to order these

1 products again? Will it be at the end of the
2 month? Are the limiters in this case working
3 correctly? I've instructed the account to get
4 the meds from another source (competitor). Is
5 this the best course of action? Any help would
6 be greatly appreciated."

7 And then as we continue to go up,
8 it says, "I am assuming this is a Retail
9 Independent class of trade. We should notify
10 the sales rep of this situation."

11 Is the sales rep what you were
12 doing, or was that -- would that be more like a
13 pharmacy business consultant?

14 A. It's a pharmacy business
15 consultant.

16 Q. So you would have been over --

17 A. Yes.

18 Q. Okay. Not in this situation, I
19 understand --

20 A. Yeah, no.

21 Q. -- but generally.

22 A. No.

23 Q. Okay. So the next one says,

24 "Steve, this 11-store chain says they will leave

1 us for H.D. Smith if we do not ship to them on
2 Monday."

3 And by that day -- so that's on
4 Friday, January 25th of 2008. And by Friday,
5 January 25th of 2008 at 11:00 p.m., the
6 threshold change is complete.

7 Do you see that?

8 A. Yes.

9 Q. So if I'm reading the e-mail
10 correctly, a threshold was reached, and because
11 that threshold had been reached, they weren't
12 going to send the controlled substances.

13 A. Yeah.

14 Q. It was a threat by the pharmacy to
15 go and get their controlled substances filled by
16 H.D. Smith, and within hours of that, the
17 threshold was increased, correct?

18 MR. PYSER: Object to form. Calls
19 for speculation.

20 A. Yeah. It does look that way, but
21 I can't speculate what happened. I only know
22 that I wouldn't have followed this. I don't
23 know -- Steve Lawrence wouldn't have come into
24 the process that I was -- that I understood it

1 was supposed to be reported through QRA, and
2 that was it.

3 MS. QUEZON: Let's go to 4348.

4 - - -

5 (Cardinal-Carney Exhibit 18 marked.)

6 - - -

7 MR. PYSER: Counsel, are we at a
8 good breaking point if we take a --

9 MS. QUEZON: Sure.

10 MR. PYSER: -- five-, ten-minute
11 break?

12 MS. QUEZON: Do you want to do
13 that now?

14 MR. PYSER: Yeah.

15 MS. QUEZON: Absolutely.

16 THE VIDEOGRAPHER: The time is now
17 11:28. We're going off the record.

18 (Recess taken.)

19 THE VIDEOGRAPHER: Okay. Time is
20 now 11:45. Back on the record.

21 BY MS. QUEZON:

22 Q. Okay. I think when we took a
23 break, we were going to take a look at Exhibit
24 Number 18. And let me know -- have you had an

1 opportunity to review it?

2 A. Just one second.

3 Q. Yeah, take your time.

4 A. I have it.

5 Q. All right. So let's start from
6 the back, if we can, page 9.

7 A. Mm-hmm.

8 Q. And it starts with an e-mail on
9 January 2nd of 2008 from Marilyn England who,
10 according to her signature line, is a pharmacy
11 business consultant. So that would be the type
12 of person that works under you as sales manager?

13 A. As a sales manager, yes.

14 Q. Now, obviously this is in Seattle.
15 So this would not have been Wheeling, West
16 Virginia. But she is a pharmacy business
17 consultant apparently in that -- from that
18 distribution center?

19 A. Yes.

20 Q. Okay. So it starts with, "Hi
21 guys, can you help us? Cost Less Purdy 14261
22 has been ordering OxyContin (brand) in all
23 strengths and we have been zeroing up until
24 today. Looking at order history, it looks like

1 we filled OxyContin on a few different blanks as
2 of today. Can you check the blank below that
3 was given to the driver and let me know if we
4 can fill this OxyContin for them or what the
5 issue is (may be the limiters)."

6 And, again, there's that word.

7 And I think we agreed that it probably has
8 something to do with the thresholds, right?

9 A. Mm-hmm.

10 Q. Yes?

11 A. Yes. Sorry.

12 Q. Sorry. Uh-huhs and huh-uhs --

13 A. Sorry.

14 Q. That's okay. All right.

15 MR. PYSER: Object to form.

16 Speculation.

17 Q. "Don't know what happened up until
18 today but the customer needs this product
19 desperately."

20 All right. And if we can go to
21 the next page in order, which is 8. And this
22 one says, "Carolyn, please review this account.
23 They are getting limited on all OxyContin even
24 though we were in a new month" -- "even though

1 we are into a new month."

2 This is January 4th of 2008,
3 correct?

4 MR. PYSER: Object to form. Calls
5 for speculation about other people's
6 thoughts.

7 A. Yes.

8 Q. Okay. Marilyn responds and says,
9 "Bill, this is an emergent" -- or "emerg
10 situation and looking for your help." They've
11 received no OxyContin since day one. "Today
12 Vault is holding three orders with OxyContin and
13 oxycodone for me because limiters are zero.
14 Please can you help and don't know who Carolyn
15 is."

16 All right. The top of the page,
17 "Carolyn, not sure who to go to on this one but
18 this is an urgent situation and any help or
19 explanation would be greatly appreciated."

20 If we go to the next page in
21 order, page 7. Carolyn McPherson says, "Bill,
22 this customer had a blocked order which is
23 currently under investigation."

24 Mr. Colley responds back to

1 Carolyn, "We need to understand what the next
2 steps are with this account. When will the
3 consultant do the site visit and who is the
4 consultant? Is it CAH, Cardinal, PBC, pharmacy
5 business consultant, or Dendrite."

6 Do you know who Dendrite is?

7 MR. PYSER: Object to form.

8 A. No, I don't.

9 Q. Never heard of them?

10 A. I have not heard of them.

11 Q. Okay. At the top of that page, it
12 says, "I received notification from Dendrite
13 this morning and the account has been added to
14 their list for a site visit."

15 Now, if we go to page 6, the top
16 e-mail from Steve Lawrence. Who's
17 Steve Lawrence?

18 A. The SVP. He's one step above
19 Chris Lanctot. Chris Lanctot is my VP, and then
20 Chris' boss is Steve Lawrence, the SVP of sales.

21 Q. Senior vice president of sales?

22 A. Yes.

23 Q. Okay. Gotcha. Thank you.

24 All right. So Mr. Lawrence says,

1 "Richard and Bill, is this the store that
2 ordered some 20,000 units in the first two days
3 in January? Can you all look at the orders for
4 this store for January for the products that we
5 are looking at. If you need help, please work
6 with Todd Cameron on my staff. If so, we don't
7 need to throw this to regulatory. We need to
8 understand what those orders for that quantity
9 is all about. That is WAY above any parameters
10 we would agree to. That would put a store at
11 the 2 to 3 million units per year."

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay. So on page 5, Mr. Colley --
15 do you know who Richard Colley is?

16 A. Yes, I do.

17 Q. Who is Richard Colley, or what --
18 like what's his position?

19 A. Now, Richard is a director in the
20 LTC class of trade from out West. At this time
21 he may have been a sales manager out West.

22 Q. Okay.

23 A. I'm not really sure.

24 Q. And "sales manager," meaning the

1 same type of role that you play in Wheeling?

2 A. Yes.

3 Q. All right.

4 A. He also could have been the sales
5 director. I'm not sure what position he held.

6 Either manager or director. But I believe
7 manager.

8 Q. All right. I think, if we look at
9 page 5 underneath his name, it says "retail
10 sales manager" --

11 A. Yep.

12 Q. -- so it sounds like you might be
13 correct.

14 Okay. "Steve" -- he writes to
15 Mr. Lawrence -- "the reason this store purchased
16 so much was in anticipation of the generic
17 oxycodone going away in the market and the
18 branded items being the only items available.
19 The Costless stores are marked as just that
20 "costless," and the availability of the generic
21 items aid accomplishing that to their
22 customers."

23 So apparently in anticipation of
24 the generic oxycodone being taken off the

1 market, this pharmacy bought 20,000 --

2 A. Attempted.

3 MR. PYSER: Object to form. Calls
4 for speculation.

5 Q. Attempted to purchase 20,000
6 units, I guess. Is that what they're called?

7 A. That's what it looks like to me.

8 MR. PYSER: Object to form. Calls
9 for speculation.

10 Q. Okay. So then Mr. Lawrence
11 responds, "This is completely inappropriate. We
12 cannot assist customers in either forward buying
13 or hoarding of controlled substances. I don't
14 even know what to tell you. You caused this
15 customer to get cut off, then why would you send
16 e-mails directly to regulatory asking them to
17 turn this store on and it is an emergency."

18 So apparently they got the 20,000
19 units and then got shut down, right?

20 MR. PYSER: Object to form.
21 Speculation.

22 A. The way I read it, they didn't.
23 Just the fact that they attempted to place that
24 order is what got them blocked and set to zero

1 going forward for that month, which is why they
2 couldn't get subsequent ones. But that's the
3 way I read this.

4 Q. Okay. Let's keep -- let's keep
5 going through the e-mail chain and see if we
6 can -- see if you're right. All right. Let's
7 go to page 4 --

8 MR. PYSER: Object to form, the
9 commentary.

10 Q. -- from Jimmy Neil.
11 Jimmy -- or from Richard Colley to
12 Jimmy Neil.

13 Do you know who Jimmy Neil was?

14 A. Jimmy would have been the
15 director. Would have been Richard Colley's
16 director at the time.

17 Q. "Jimmy, is there anything you can
18 do to have this account surveyed so they can get
19 reinstated. Last word was they had been sent
20 over to the Dendrite team but no one has
21 contacted the store."

22 Then we go to page 3. Apparently
23 whoever Don Williams is with Dendrite -- the
24 surveyor is out of the state.

1 And then the e-mail at the top of
2 the page that starts "Michael and Tom."
3 "Michael and Tom, I know this account made a
4 serious error in attempting to forward buy some
5 controls in anticipation of the generic moving
6 back to brand, but we have no reason to believe
7 it was anything other than attempt to spec buy.
8 This account is part of a group that purchases
9 26 million annually. We have already turned one
10 other Cost Less account off and then back on
11 after a Dendrite survey. Is there any way per
12 Richard's request to get a Dendrite person in
13 the store this week versus next? My area would
14 be willing to pick up the T&E expense to get
15 this done."

16 So apparently, because of the
17 purchase, a site visit is necessary. Is that
18 something that you're familiar with?

19 A. Because of the blocked --

20 MR. PYSER: Object to form.
21 Speculation.

22 Q. Go ahead. You can answer.

23 A. Yeah, because of the blocked
24 order. It came up as suspicious.

1 Q. Okay. And so before it can be
2 filled or anything can be done, there's supposed
3 to be a site visit to the store; is that right?

4 MR. PYSER: Object to form.
5 Speculation.

6 A. In some cases, yes. The order
7 would have been held pending regulatory
8 investigation.

9 Q. Okay. Let's go to page 2. Now,
10 this one is from Michael Moné. Do you know who
11 Michael Moné is?

12 A. I do.

13 Q. Who is that?

14 A. He at a period in time headed up
15 our QRA department.

16 Q. All right. "Nick/Eric, can you
17 get me the status of this account vis-a-vis
18 visits by Dendrite, or was it just a limiter
19 issue? If a limiter, as my recollection" -- "If
20 a limiter, as my recollection is suggesting,
21 have we committed to a sales or QRA visit in one
22 month?"

23 And the response from Nick -- and
24 who is Nicholas Rausch?

1 A. I'm not sure. It may have been
2 the Dendrite person.

3 Q. Nicholas responds to Michael and
4 says, "Michael, this is a limiter issue. Cost
5 Less Purdy bumped the limit on 1/3/08 for its
6 purchases of oxycodone. The pharmacy was
7 previously visited as part of the 152
8 hydrocodone review. It does not appear this
9 pharmacy was scheduled to be visited again and
10 below are the summaries from your or Gary's.
11 Review.

12 "Decision. Account's threshold
13 limit will be increased to 23,000 units of
14 oxycodone per month."

15 Do you see that?

16 A. Yes.

17 Q. So without a visit, apparently,
18 the threshold was simply increased to 23,000
19 units; is that right?

20 MR. PYSER: Object to form.

21 Speculation.

22 A. I don't know -- I think the way I
23 read it is that it was visited before. And
24 based on that previous visit, these were the

1 decisions that were made before this all
2 happened.

3 Q. Sure. Okay. So let's back up.

4 They attempted to buy 20,000
5 units, and because of that, it was blocked and a
6 site visit would have been called for, correct?

7 A. That's what --

8 MR. PYSER: Object to form.

9 A. That's what it seems like, yes.

10 Q. And without any evidence in the
11 e-mail of an actual site visit occurring after
12 the 20,000-unit order, the threshold limit --
13 the decision was to increase the threshold limit
14 to 23,000 units per month, correct?

15 MR. PYSER: Object to form.

16 A. Could you repeat the question
17 again, please?

18 Q. Sure.

19 We know that, at least according
20 to the e-mail, there was an attempted purchase
21 of 20,000 units. Whether it was filled or not,
22 we don't know. But because of it, a site visit
23 to the store was necessary, correct?

24 MR. PYSER: Object to form.

1 A. That's what it sounds like, yes.

2 Q. There is no evidence in the
3 e-mails that that site visit took place;
4 instead, it is considered a limiter issue and
5 the account's threshold limit was increased to
6 23,000 units of oxycodone per month, correct?

7 MR. PYSER: Object to form.

8 A. I would be speculating. It looks
9 as if they gathered some other information that
10 allowed them to make this decision short of
11 going out there.

12 Q. And they reclassified it as --
13 from a medium purchaser to a large purchaser.

14 Do you see that?

15 A. I do.

16 Q. And the threshold is increased to
17 23,000 units going forward, correct? 23,000
18 units per month?

19 MR. PYSER: Object to form.

20 Q. This wasn't a one-time thing.
21 It's -- the threshold itself has been increased
22 so that they can purchase up to 23,000 units of
23 oxycodone a month from this point forward; is
24 that correct?

1 MR. PYSER: Object to form.

2 A. Increase to 23 -- I'm not -- I
3 wouldn't be -- I'm not aware of what it might
4 have been. It might have been 18,000 before
5 they increased it to 23. It might have been
6 19,000. It doesn't say here. But, yes, it does
7 say "increased to 23,000 units per month."

8 Q. Okay. Even though everyone
9 involved in this knows that the reason for the
10 20,000-unit purchase was a spec buy, was to try
11 to get as much as the generic as they could
12 before it went off the market, right?

13 A. I can't speak to what everyone
14 knows or everyone knew in this situation.

15 MR. PYSER: Object to form.

16 Q. The e-mails make it clear that the
17 Cost Less Purdy store attempted to buy 20,000
18 units of oxycodone generic, correct?

19 A. Yes.

20 Q. And that was the reason why it was
21 such a large amount at the beginning of the
22 month, correct?

23 MR. PYSER: Object to form.

24 A. That's why it hit the suspicious

1 order monitoring system and why it was held and
2 why it required further investigation.

3 Q. And without doing that
4 investigation, the decision was made to increase
5 the threshold limit to 23,000 going forward?

6 MR. PYSER: Object to form.

7 A. Yet I wouldn't agree with the fact
8 that you say without doing the investigation.
9 The investigation takes on a couple different
10 forms, one of which is to go out and do a site
11 visit. But it could have been justified through
12 conversation and a collection of data that I
13 don't -- I'm not seeing here.

14 Q. Okay. And regardless of what it
15 was, what the threshold was from January 9th,
16 2008 forward, this pharmacy's threshold was
17 increased to 23,000 units a month?

18 MR. PYSER: Object to form.

19 A. It looks to me like their -- their
20 threshold going forward was 23,000 units per
21 month, yes.

22 MS. QUEZON: Let's go to 4522,
23 please.

24 - - -

1 (Cardinal-Carney Exhibit 19 marked.)

2 - - -

3 BY MS. QUEZON:

4 Q. All right. Mr. Carney, are you
5 familiar with this standard operating procedure
6 that is entitled "Sales Early Dialogue"?

7 A. I've not seen this document
8 itself.

9 Q. Are you familiar with the concept
10 of early dialogue as it relates to threshold
11 events?

12 A. Yes.

13 Q. Tell me what your understanding is
14 of early dialogue as it applies to threshold
15 events.

16 A. Early dialogue as it applies to
17 threshold events. As far as I understand, it
18 would be the dialogue between us and the QRA
19 department. Just communication about certain
20 situations, things going on, Knowing Your
21 Customer types of shared information between us
22 and QRA.

23 Q. Okay. Let's go to page 2. And
24 you see at the bottom where it says "Procedures

1 for Reporting"?

2 A. Yes.

3 Q. All right. So "Early Dialogue.

4 If QRA determines that a customer's order is
5 close to a threshold but is not a threshold
6 event, the order will be shipped and the
7 salesperson will be notified. Notification may
8 be made directly to the salesperson or to the
9 customer with a cc to the salesperson."

10 So basically you've set a
11 threshold for a pharmacy or a customer, and as
12 they get close to it, Cardinal's going to let
13 them know, "You guys are getting close to your
14 threshold." Right?

15 MR. PYSER: Object to form.

16 A. That was never my understanding,
17 but that's what it does say right here.

18 Q. Was it your understanding that the
19 pharmacy -- the customer, being the pharmacy,
20 shouldn't be aware of what their threshold is?

21 A. The expectations were that we
22 wouldn't coach them or give them specific
23 numbers about where their threshold events could
24 occur.

1 Q. Because then they could either
2 request an increase in threshold and you'd never
3 hit a threshold event, right?

4 MR. PYSER: Object to form.

5 A. Yes.

6 Q. Do you know whether salespeople
7 outside of Wheeling were following this policy
8 and letting their customers know -- the
9 pharmacies, the drugstores know that they were
10 getting close to a threshold so that they could
11 be increased?

12 A. I can't speak to that. I don't
13 know.

14 Q. But your instructions to your
15 salespeople would have been not to inform the
16 drugstores or the pharmacies that they're
17 getting close to a threshold so that they could
18 be increased?

19 A. That was the expectation, correct.

20 MS. QUEZON: Okay. Let's go to
21 4948, please.

22 - - -

23 (Cardinal-Carney Exhibit 20 marked.)

24 - - -

1 A. Okay.

2 Q. Okay. So actually starting on
3 that first page, the bottom e-mail from
4 Paul Farley.

5 Do you know who Paul Farley is?

6 A. Yes, I do.

7 Q. Who is Mr. Farley?

8 A. He was a salesperson in charge of
9 our national accounts, class of trade.

10 Q. National accounts, CVS would be
11 one of those?

12 A. Yes.

13 Q. All right. So Mr. Farley sends an
14 e-mail to Mr. Moné who I think we already
15 established was quality and regulatory
16 affairs --

17 A. Yes.

18 Q. -- at some point?

19 A. Yes.

20 Q. Okay. And it's in regards to CVS
21 Number 219, Importance: High. "Michael, I'll
22 continue to try and reach you by phone but I
23 wanted to recap my conversations with CVS this
24 morning. I spoke with Brian Whalen at CVS" --

1 Do you know who Brian Whalen is?

2 A. I do not.

3 Q. -- "a couple times this morning
4 regarding the store and the other locations you
5 referenced at NACDS."

6 Do you know what that stands for?

7 A. National -- it's drug chains.
8 It's an organization around the -- National
9 Association of Drug Chain Pharmacies, I believe.

10 Q. Okay. "I also reviewed your
11 slides with him. He tells me that he responded
12 to Cardinal last month on inquiries for these
13 same stores. At that time CVS experienced an
14 increase in sales of oxycodone due to the DEA
15 closing stores in that area."

16 Mr. Carney, were you familiar with
17 what was going on in Florida around 2010 and the
18 shutting down of the pill mills that was taking
19 place?

20 A. Familiar, no. Aware of through
21 the news, yes.

22 Q. Okay. "Again earlier this week,
23 because of our request, he sent another e-mail
24 to LP" --

1 Do you know what LP stands for?

2 A. I do not.

3 Q. -- "asking them to take a fresh
4 look. He received a response yesterday that
5 they have reviewed the store's activities and
6 they've been closely monitoring store 219 for a
7 couple of weeks. None of these stores show
8 significant growth or shrink issues.

9 Additionally, CVS has a new attorney working
10 with the DEA. They acknowledge that Florida has
11 been cracking down on pill mills and that is
12 driving more legitimate traffic to CVS stores.

13 "Brian will send your slides over
14 to LP for their review and response. They will
15 not provide the doctor or patient information
16 you requested unless it is requested by the DEA.
17 He was quite adamant about this. He does not
18 expect Cardinal to interrupt service to CVS
19 stores since they have responded in the manner
20 we originally agreed upon when launching the
21 suspicious order monitoring program. Any
22 disruption to service will impact patient care
23 and patient care with pain medication is
24 critical as you are aware. I ask that you

1 release any pending orders and update Gilberto."

2 Do you know who Gilberto is?

3 A. I believe he may have been a --

4 I've heard the name before.

5 Q. Okay. And in response, Mr. Moné

6 says, "Okay to release the CVS held orders for

7 the weekend."

8 Correct?

9 A. Yes.

10 Q. Are you aware, Mr. Carney, that

11 when a chain pharmacy was involved, that the

12 common practice was to call corporate of that

13 chain pharmacy and have them look into their own

14 stores?

15 A. Not aware.

16 MR. PYSER: Object to form. Calls

17 for speculation.

18 A. I'm not aware. I was in the

19 independent retail sales class of trade, not the

20 national account or chains class of trade.

21 Q. Okay. How -- are independents

22 literally just one, or can there be more than

23 one in the retail independents?

24 Does that make sense?

1 A. Could there be multiple store
2 owners, right? So, yeah, there can be smaller
3 groups. If they -- you know, let's say a
4 pharmacist owns two -- he or she owns two or
5 three stores, yes, that -- that can occur, but I
6 don't call on the chains. My sales team doesn't
7 call on the chains.

8 Q. Can we agree, Mr. Carney, that it
9 would be inappropriate if you -- if there were
10 suspicious orders to -- for you to call the
11 pharmacy and have them look into their own
12 suspicious orders and let you know whether or
13 not it was okay?

14 MR. PYSER: Object to form. Calls
15 for speculation. Improper hypothetical.

16 Q. Would you do that?

17 MR. PYSER: Object to form.

18 A. No. But we would request
19 information from the pharmacy.

20 Q. And then make your own
21 determination?

22 A. Our QRA department would, yes.

23 Q. Okay. Because, as we discussed
24 before, that's that the non-delegable duty under

1 the Controlled Substance Act, where it doesn't
2 say you can rely on somebody else's opinion as
3 to whether or not it's suspicious, you have to
4 have your own suspicious order monitoring
5 system, right?

6 MR. PYSER: Object to form. Legal
7 conclusion.

8 A. We have to have our own suspicious
9 order monitoring system, yes.

10 Q. Okay. So at least according to
11 the e-mail, because they had shut down pill
12 mills, CVS is getting more prescriptions for
13 opioids, and that's a legitimate reason to
14 release held suspicious orders --

15 MR. PYSER: Object to form.

16 Q. -- right?

17 A. I can't speculate on that. I do
18 know that when those facilities are closed, that
19 those patients need those FDA-approved
20 medications for their pain. So they're looking
21 to go anywhere in the area, CVS or anyone else.
22 It's like squeezing a balloon.

23 Q. Okay. So is it your testimony
24 that the shutting down of pill mills is a

1 legitimate justification for an increase in
2 opioids to other pharmacies?

3 MR. PYSER: Object to form.

4 Mischaracterizes.

5 A. No.

6 MS. QUEZON: Let's go to 4323,
7 please. This is Exhibit 21 for the
8 record.

9 - - -

10 (Cardinal-Carney Exhibit 21 marked.)

11 - - -

12 BY MS. QUEZON:

13 Q. Okay?

14 A. Mm-hmm.

15 Q. All right. So if we go to the
16 second page. The e-mail is from Jennifer Hug,
17 who is a manager of retail national accounts,
18 healthcare supply chain services.

19 Do you see that?

20 A. Yes, I do.

21 Q. All right. And she is e-mailing a
22 person by the name of Jason Spinard or Spinard
23 and says, "Jason, can you please have your LP
24 department look into the ordering habits of

1 these two stores below. We have seen a huge
2 jump in oxycodone purchases from both. Please
3 see the detail for each store."

4 And it's CVS 850. "I spoke to
5 Nick at this pharmacy. He stated there was a
6 pain clinic down the road which is causing
7 scripts to increase significantly." And sets
8 forth the increases.

9 CVS 219. Spoke to Nick at the
10 pharmacy. He stated there's an increased number
11 of patients from pain clinics, that they're only
12 filling for local clinics. Please see examples.

13 And then Jason responds back. And
14 do you see Jason's e-mail address next to his
15 name?

16 A. JasonSpinard@CVS.com.

17 Q. So he's a CVS employee?

18 MR. PYSER: Object to form.

19 Q. And it says, "Jen, from LP: Store
20 850 and 219 are okay. They're comfortable with
21 the levels."

22 Do you see that?

23 A. Yes.

24 Q. And then at the top, Ms. Hug, I

1 guess, forwards the information from CVS' LP
2 department in reference to the two suspicious
3 order monitoring events attached, and says,
4 "Please let me know if you have any additional
5 concerns."

6 So what we have here is CVS
7 investigating CVS and finding that CVS isn't
8 doing anything wrong, right?

9 MR. PYSER: Object to form.

10 A. That's not the way I interpret it.

11 Q. Clearly Ms. Hug is asking CVS to
12 look into the activities of two CVS stores,
13 correct?

14 MR. PYSER: Object to form.

15 A. This looks as if she's done her
16 due diligence. She recognizes a spike in their
17 purchases. And, yes, she's sharing that
18 information with whoever Jason Spinard is to
19 find out if they're aware, if he's aware at that
20 level.

21 Q. And, again, just so we're clear,
22 in your position, you would not rely on the
23 pharmacy themselves to let you know whether
24 something is suspicious or not, correct?

1 MR. PYSER: Object to form.

2 A. I don't know that these rose to
3 the level of suspicious orders, i.e., they were
4 orders that were sent in and were looked at,
5 other than she was doing her due diligence of
6 just recognizing this and talking about it out
7 loud, so ...

8 Q. Well, I understand. If we go back
9 up to that e-mail at the top. SOM, that was not
10 my term. That was the term that Ms. Hug used in
11 reference to the two suspicious order monitoring
12 events attached, correct?

13 MR. PYSER: Object to form.

14 A. I can't discern if they're actual
15 suspicious orders that were determined
16 suspicious or if she's just saying that she
17 recognizes it as somewhat suspicious. I would
18 be speculating.

19 Q. Okay. My question is, though, you
20 would not rely on one of your pharmacy customers
21 to tell you that something is not suspicious?
22 You would do your own due diligence and make
23 that determination, correct?

24 MR. PYSER: Object to form.

1 Speculation. Hypothetical.

2 A. If I saw something suspicious
3 going on in the pharmacy or outside the
4 pharmacy, I might mention to the customer, "Hey,
5 what's this about? Are you aware of this?"

6 Q. And if the pharmacist says, "Oh,
7 yeah, we're cool," is that the end of your due
8 diligence?

9 MR. PYSER: Object to form.

10 A. No, it wouldn't be.

11 Q. Okay. Thank you.

12 MS. QUEZON: All right. Let's go
13 to 4956, please.

14 - - -

15 (Cardinal-Carney Exhibit 22 marked.)

16 - - -

17 MR. PYSER: Counsel, I'm not
18 asking for one now, but sometime in the
19 next 15 minutes or so when you get a
20 logical stopping point.

21 MS. QUEZON: For sure. Let's do
22 this document, and then we'll take a
23 break for lunch if that sounds okay.

24 MR. PYSER: Good enough. Yeah.

1 MS. QUEZON: Okay.

2 BY MR. PYSER:

3 Q. Okay. First of all, Mr. Carney,
4 as you've had the opportunity to kind of flip
5 through it, do you recognize this document? It
6 appears to be from 2010, at least according to
7 the copyright on the front page.

8 A. I do not.

9 Q. And it may be that this was more
10 for QRA, based upon the agenda. If you go to
11 the second page of the document, it looks like
12 that they're reviewing historical context and
13 timeline, implementation of threshold limits
14 into the SOM, electronic monitoring, overview of
15 initial methodology used to calculate the
16 threshold limits, et cetera.

17 Do you recall attending a meeting
18 where these different items were discussed, this
19 agenda was discussed?

20 A. I do not.

21 MS. QUEZON: Let's go to page 3,
22 if we can. And if you can blow that up
23 some, it would be very helpful to me.

24 All right. There we go. Much better.

1 Okay.

2 BY MS. QUEZON:

3 Q. So this the -- it's entitled
4 "Historical Context." And if we start there,
5 you see November 1, 2007?

6 A. I do.

7 Q. Okay. And if you look at -- just
8 right below that, December 1, 2007 is the next
9 date in line, and it says, "Distribution center
10 licenses suspended by DEA."

11 Right?

12 A. I see that.

13 Q. Okay. So then on 12/20 -- oh,
14 much better -- then on 12/20 up at the top, it
15 says, "Implemented AHOP threshold limits for
16 independent segment."

17 What is AHOP?

18 A. I don't -- I don't know.

19 Q. Okay. But it looks as if once the
20 DCs got suspended, we're going to put some
21 thresholds in place, right?

22 MR. PYSER: Object to form.

23 A. On this document, yes, that's what
24 that looks like.

1 Q. So then on February 19, 2008, so
2 we start with the independent segment, and then
3 it says, "Implemented all threshold limits for
4 independent segment."

5 I guess the AHOP is different than
6 the entire independent segment?

7 MR. PYSER: Object to form.

8 Q. Do you know?

9 A. I don't.

10 Q. Okay. Then on July 1, 2008,
11 implemented threshold limits for LTCH -- I don't
12 know -- segment. I would assume long-term care
13 and hospital?

14 A. LTC I could say is long-term care.
15 The HI, I do not know.

16 Q. All right. And then October 1,
17 2008, began implementation of threshold limits
18 for national chain stores.

19 Do you see that?

20 A. I do.

21 Q. Okay. So we've got the suspension
22 by the DEA in December of 2007, and almost a
23 year later, Cardinal begins implementation of
24 threshold limits for national chain stores.

1 Do you see that?

2 A. That's what that says, yes.

3 Q. Okay. Then I think the next date
4 in line is December 7, 2008, implemented
5 threshold limits for hospital segment. And
6 January 2009, implemented threshold limits for
7 all remaining customers.

8 MR. PYSER: Object to form.

9 Q. Did we miss one? We missed one.
10 December 15, 2008, up at the top, implemented
11 threshold limits for remaining chain stores
12 (CVS).

13 Do you see that?

14 A. I do.

15 Q. Okay. Now, the rest of the dates
16 and information regarding those dates appears to
17 be in regard to advanced analytics.

18 Do you know what that is?

19 A. I'd be speculating.

20 Q. Okay. Well, let's just go the --
21 to September 30th of 2010 was when the threshold
22 forecast model was to be delivered.

23 Do you see that?

24 A. I see that.

1 Q. Okay. Do you know what a
2 threshold forecast model is?

3 A. I do not.

4 Q. Do you know whether even by 2010
5 Cardinal was using advanced analytics in their
6 suspicious order monitoring program?

7 A. Repeat the question, please.

8 Q. Do you know if by the end of 2010,
9 Cardinal was using advanced analytics in its
10 suspicious order monitoring program?

11 A. We've always had a program in
12 place that evolved over time, and as new
13 technology came on board, which is probably
14 where we picked up here, that's what they're
15 defining here, maybe to meet those promises that
16 they made.

17 Q. Back in 2008?

18 A. Again, I would just be
19 speculating. But I would say that we always had
20 a system in place.

21 Q. Right. I'm asking specifically
22 about advanced analytics. Do you know whether
23 by the end of 2010, Cardinal was using advanced
24 analytics in its suspicious order monitoring

1 system? And you may -- you may not know.

2 A. Yeah, I do not.

3 Q. Okay.

4 A. I do not know.

5 MS. QUEZON: Okay. All right. I

6 think this is a good time to stop.

7 THE VIDEOGRAPHER: The time is now

8 12:33. Going off the record.

9 - - -

10 Thereupon, at 12:33 p.m. a luncheon

11 recess was taken until 1:34 p.m.

12 - - -

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1 Tuesday Afternoon Session
October 16, 2018

2 1:34 p.m.

3 - - -

4 THE VIDEOGRAPHER: Okay. The time
5 is now 1:34. Back on the record.

6 - - -

7 (Cardinal-Carney Exhibit 23 marked.)

8 - - -

9 CROSS-EXAMINATION (CONT'D.)

10 BY MS. QUEZON:

11 Q. Mr. Carney, I believe when we left
12 off, we had looked at a couple of e-mails
13 regarding some threshold increases and one about
14 the chain pharmacies sort of investigating your
15 own conduct.

16 Do you remember that line of
17 questioning?

18 A. Yes.

19 Q. Okay. If we can, let's go to
20 4085. And before you even go through and look
21 at the document that we've provided to you,
22 Exhibit 23, let me just ask you, were you aware
23 that the Lakeland distribution center was
24 investigated again by the DEA in approximately

1 2012?

2 A. No, I was not.

3 Q. Okay. To the best of your
4 recollection, did anyone from Cardinal provide
5 you with the details of that investigation or
6 the facts and circumstances leading up to the
7 suspension of their ability to distribute
8 controlled substances?

9 A. No.

10 Q. All right. If you can, just take
11 a look -- and the first question is just going
12 to be, did anyone provide you -- as the sales
13 manager for the Wheeling distribution center,
14 provide you with this government's prehearing
15 statement that sets forth the investigation and
16 the facts and circumstances leading up to the
17 suspension of the Lakeland distribution center?

18 A. I would have been the director in
19 February of 2012, but no.

20 Q. I apologize. You are correct.

21 All right. Well, let's look at a
22 few of the pages of the pretrial statement. If
23 we can go to page 4. And at the bottom of the
24 page, the very last sentence on the page "From

1 approximately," it states, "From approximately
2 February 2009 through June of 2010" -- now,
3 again, chronologically, let's just get some
4 guideposts. If you'll recall, the Memorandum of
5 Agreement was signed on September of 2008.

6 Do you remember looking at that
7 exhibit a little while ago?

8 A. Yes.

9 Q. All right. So four months later.
10 "From February 2009 through June 2010, monthly
11 oxycodone sales to Florida practitioners
12 steadily increased and well surpassed the
13 monthly oxycodone sales in the remaining states.

14 "In June of 2010, DEA took action
15 on wholesale distributors supplying Florida
16 practitioners at rogue pain clinics. Once DEA
17 took action on wholesale distributors, monthly
18 oxycodone sales to practitioners in Florida
19 substantially decreased.

20 "Despite this decrease in monthly
21 oxycodone sales beginning in 2010, Respondent's
22 sales to its top four Florida retail pharmacy
23 customers on average continued to increase."

24 And I think we kind of looked at

1 this issue a little while ago. With the pill
2 mills being shut down, the pain clinics being
3 shut down, there's an increase in prescriptions
4 to -- the one we looked at was at CVS.

5 Do you remember that?

6 MR. PYSER: Objection to form.

7 A. Yes.

8 Q. So let's go on to page 12 of the
9 document, beginning at that middle paragraph.
10 "DEA has communicated to Cardinal Health that it
11 is required to conduct its own due diligence on
12 its retail pharmacy chain customers."

13 And skipping down to "During the
14 teleconference."

15 "During the teleconference,
16 Mr. Moné stated that Cardinal Health
17 communicates with the loss prevention, LP,
18 individuals of chain pharmacies when an order is
19 approaching or exceeding set thresholds and
20 maintains e-mails of the communications.

21 "DEA Staff Coordinator Mike Arpaio
22 communicated to Mr. Moné that due diligence
23 investigations must be performed on all
24 customers, chain pharmacies included, when it

1 appears that suspicious high-volume orders are
2 requested of controlled substances and
3 questionnaires should be sent to the chains.

4 "Mr. Moné in turn stated that QRA,
5 quality regulatory affairs, is unable to look at
6 chain pharmacy systems in order to identify
7 problem areas when there is not an order of
8 interest or their threshold is not exceeded."

9 Were you aware -- and I understand
10 that you are in independent retail. But were
11 you aware that it was Cardinal Health's policy
12 to simply communicate a suspicious -- or a
13 suspicious order to the loss prevention of its
14 chain customers?

15 MR. PYSER: Object to form.

16 A. I was not.

17 Q. Let's go to page 16 of the
18 document. And the section that says,
19 "Exponentially Increasing High-Volume Sales,"
20 about the second full sentence, "DEA
21 concluded" --

22 A. I see it.

23 Q. -- "that over a period of
24 approximately three years, from

1 November 2008" -- remembering that the
2 Memorandum of Agreement was signed in September
3 of 2008 -- from "November of 2008 to
4 December 2011, Respondent's anti-diversion
5 controls were inadequate to meet their due
6 diligence responsibilities."

7 And then if we'll go down to the
8 final paragraph of the page. "Between
9 November 1, 2008, and December 31, 2011,
10 Respondents sold over 12.9 million dosage units
11 of oxycodone to its top four retail pharmacy
12 customers. From 2008 to 2009, Respondent's
13 oxycodone sales to its top four retail pharmacy
14 customers increased 803 percent. From 2009 to
15 2010, the oxycodone sales increased 162 percent.
16 Between 2009 and 2011, oxycodone sales to top
17 four retail pharmacies increased 241 percent."

18 Were you aware of any of those
19 facts?

20 MR. PYSER: Object to form.

21 A. I was not.

22 Q. All right. If we can go to
23 page 18, please, under "Inadequate Due
24 Diligence" at the bottom of the page. And you

1 see under small letter A, "Regularly exceeding
2 the distribution thresholds it established for
3 itself."

4 And then on to the next page.

5 "Respondents set monthly thresholds for
6 oxycodone distributions to each of its stores.
7 But from April 2009 to August 2011, Respondent
8 disregarded the oxycodone thresholds for its top
9 four retailers at least 44 times, sometimes by a
10 few thousand pills and sometimes by tens of
11 thousands. The unexplained disregard for its
12 own threshold suggests that Respondent did not
13 take its own policy seriously. Based on this
14 evidence, the DEA was unable to conclude that
15 Respondent's stated threshold volumes served as
16 a reliable and consistent constraint against
17 diversion."

18 Did anyone in 2012 make you aware
19 that at least at the distribution center in
20 Florida, they were disregarding their own
21 thresholds?

22 A. No.

23 MR. PYSER: Object to form.

24 You can answer.

1 A. No.

2 Q. Would you have liked to have
3 known?

4 MR. PYSER: Object to form.

5 A. Again, my area was in West
6 Virginia, Pennsylvania, and Ohio, and I wasn't
7 aware of any of this information.

8 Q. And so we're clear, the policies
9 and procedures of Cardinal apply to all the
10 distribution centers, right?

11 A. Yes.

12 Q. Is there any regular communication
13 between the distribution centers regarding
14 safest practices while you have been employed at
15 Cardinal?

16 A. We are communicated with regularly
17 on what the expectations and policies and
18 procedures are. I can't speak to how they
19 interpret -- someone else might interpret those
20 policies and procedures or adhere to them. I
21 can't speak to it.

22 MS. QUEZON: Let's look -- and
23 we'll come back to this one. But let's
24 look at 4633, please.

1 - - -

2 (Cardinal-Carney Exhibit 24 marked.)

3 - - -

4 BY MS. QUEZON:

5 Q. Do you know how many suspicious

6 orders were reported by the Wheeling

7 distribution center between 2007 and 2012?

8 A. Do not.

9 Q. Do you know if any were?

10 A. Yes. I believe so. Yes.

11 Q. Not even a ballpark as to how

12 many?

13 A. I couldn't speculate.

14 Q. Mr. Carney, this is just a graph

15 of the number of times thresholds were exceeded

16 from 2009 through to 2011.

17 Do you see that?

18 MR. PYSER: Object to form.

19 A. I do.

20 Q. And do you also see the comments

21 in the middle section as far as the reasoning

22 behind the increase in thresholds?

23 A. I do.

24 Q. Do you know, as you sit here

1 today, how many times the Wheeling, West
2 Virginia distribution center failed to adhere to
3 their own -- to the thresholds that they had set
4 for their customers?

5 MR. PYSER: Object to form.

6 A. I do not.

7 Q. Have you ever been provided by
8 Cardinal with a graph or table, such as the one
9 that has been presented to you today, that would
10 show you, as the sales manager, how many times
11 in Wheeling, West Virginia that the very
12 thresholds that had been set were exceeded or
13 increased?

14 MR. PYSER: Object to form.

15 Misstates evidence. Assumes that that
16 has ever happened.

17 A. I have not.

18 Q. Okay. If we can go back to 4085,
19 please, and page 19.

20 Now, do you see, Mr. Carney, under
21 b, "Failing to follow its own Suspicious Order
22 Monitoring policies"?

23 A. I do.

24 Q. Okay. And if you'll recall, this

1 is the suspicious order -- I mean -- I'm sorry.

2 One more time.

3 If you'll recall this is the
4 standard operating procedure that we looked at a
5 little while ago that had the watch list, yellow
6 flag, red flag.

7 Do you remember that?

8 A. I see that, yes.

9 Q. And it's referenced here where --
10 and we read it together a little while ago that,
11 "Respondent attaches a red flag to a particular
12 customer, which is precipitated by the following
13 two events: Sales increased by 15 percent (at
14 least 10,000); and 2) at least 20 percent or
15 more in dosage units."

16 Do you see that?

17 A. I do, yes.

18 MS. QUEZON: Okay. If we can now
19 switch off of this exhibit and go to
20 4109.

21 - - -

22 (Cardinal-Carney Exhibit 25 marked.)

23 - - -

24

1 BY MS. QUEZON:

2 Q. Mr. Carney, this is a declaration
3 of one of the witnesses from the DEA who did
4 some of the investigation into the Lakeland,
5 Florida distribution center.

6 Have you ever seen the declaration
7 of Ruth Carter?

8 A. I have not.

9 MR. PYSER: Object to form on the
10 preface to that question.

11 MS. QUEZON: Let's go to page 8 of
12 the document, please. And if you can
13 pull up the bottom part.

14 A. I only have three pages.

15 Q. Oh. Well, that's not going to
16 work. Let me hand you mine. And we'll
17 substitute this for the exhibit.

18 A. Sure.

19 Okay. I'm there.

20 Q. All right. And on page 8, if you
21 can -- sort of the footnote area, "The following
22 data was taken from Respondent's" -- do you see
23 that?

24 A. I do.

1 MS. QUEZON: Can you bring that
2 part of it up a little bit so we can see
3 it better? Yeah, the whole thing, like
4 that entire section, if you don't mind.
5 Yeah, there we go.

6 BY MS. QUEZON:

7 Q. All right. And this basically
8 says, "The following data was taken from
9 Respondent's ESOM database, provided in response
10 to the AIW" -- which is a warrant -- "and
11 establishes the following red flag events. The
12 events are based on monthly accruals of
13 controlled substances."

14 And do you see where four
15 different pharmacies -- these are the top
16 purchasers of controlled substances from the
17 Lakeland distribution center. And you see a
18 listing of all the red flag events that occurred
19 between -- in the years of 2009 through 2011?

20 MR. PYSER: Object to form.

21 A. I do.

22 Q. And do you see that as a result of
23 the red flag event, there was supposed to have
24 been a site visit to the pharmacies.

1 Is that your understanding of the
2 policy at Cardinal?

3 MR. PYSER: Object to form.

4 A. Based on what we read before, it
5 said that a 10 percent increase would. So, yes.

6 Q. Okay. Again, have you ever been
7 presented with this type of information, meaning
8 red flags that were not responded to pursuant to
9 the Cardinal policies for the Wheeling, West
10 Virginia distribution center?

11 MR. PYSER: Object to form.

12 A. I have not.

13 MS. QUEZON: Okay. Let's go to
14 P1.4655, please.

15 BY MS. QUEZON:

16 Q. And so we're clear, while we're
17 getting that exhibit ready, you were not told by
18 anyone at Cardinal that the Lakeland
19 distribution center had once again faced a
20 suspension or any of the facts and circumstances
21 that led to that?

22 A. Not that I recall.

23 - - -

24 (Cardinal-Carney Exhibit 26 marked.)

1 - - -

2 BY MS. QUEZON:

3 Q. Let me know when you have the
4 opportunity to look through the document,
5 please.

6 A. I've got it.

7 Q. Okay. So obviously this is an
8 e-mail with an attachment from Mr. Lanctot to
9 you, correct?

10 A. Initially from Todd.

11 Q. Mr. Cameron?

12 A. Yeah, to -- oh, no. Yeah. So it
13 was -- it did come from Chris to me, yes.

14 Q. Okay. And do you recall receiving
15 this?

16 A. Yes, I believe so.

17 Q. All right. And the attachment is
18 called "Enhancing the Anti-diversion Program."
19 And is dated January 17th, 2013; is that right?

20 A. Yes.

21 Q. I'm sorry. Go back to that first
22 page, the e-mail.

23 In looking at the section from
24 Mr. Cameron when he sends it initially to

1 Mr. Lancot and some other individuals, it
2 states, "It's intended to be internal only even
3 though we know will end up in customer and DEA's
4 hands."

5 Do you have any idea what
6 Mr. Cameron means by this?

7 A. I do not.

8 Q. Let's go to the actual attachment,
9 "Enhancing the Anti-diversion Program." And if
10 we could go to the second page of that. So it
11 will be page 3 of the exhibit.

12 A. Yes.

13 Q. Okay. Now, this says, "Objective
14 Criteria. The eight objective criteria that we
15 measure and evaluate to determine whether to set
16 thresholds above the national average are as
17 follows." And then it lists eight different
18 criteria, and it gives us the national average,
19 and then the 95th percentile.

20 Do you see that?

21 A. I do.

22 Q. And would that be the
23 95th percentile of pharmacies across the United
24 States?

1 A. I believe it would, yes.

2 Q. All right. So I'm just trying to
3 understand the graph -- or the table.

■

■

■

■

8 A. Mm-hmm.

9 Q. And --

10 A. Yes, yes.

11 Q. And then the 95th percentile is
12 68 percent?

13 A. Anything above that.

14 Q. Okay. Now, the paragraph
15 underneath the table, basically the part that is
16 bolded, ■

■

■

■

■

■

22 Do you know what that means?

23 A. Yes.

24 Q. Explain that to me, please.

1

A.

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A. No, it would --

23

MR. PYSER: Object to form.

24

Go ahead and answer.

1 A. Yes. No, it would. [REDACTED]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED]
■ [REDACTED]

7 Q. Have you seen this objective
8 criteria applied to pharmacies that you
9 distribute to?

10 A. Every one.

11 Q. I haven't seen it. That's the
12 reason I'm asking.

13 A. Yes.

14 Q. So there -- this objective
15 criteria has been applied to -- to the best of
16 your knowledge, to the pharmacies that Cardinal
17 sells to?

18 MR. PYSER: Object to form.

19 A. At least in my territories, yes.
20 And this was for a time the -- what we probably
21 called the advanced analytics.

22 Q. And when you say -- the advanced
23 analytics we talked about before --

24 A. Yes.

1 Q. -- back with that chart?

2 A. Yes.

3 Q. Okay. And so now we're in January
4 of 2013 when we're enhancing the anti-diversion
5 program to use our advanced analytics?

6 A. When it comes to this, [REDACTED] --
7 yes, the date, yes.

8 Q. Okay. All right. And then go to
9 page 4, please. Under the section that says,
10 "We will not fill any order for a controlled
11 substance that exceeds a threshold."

12 Do you see that?

13 A. I do.

14 Q. Okay. "Since our thresholds will
15 be based on objective criteria and data and
16 tailored to each customer, we will not fill any
17 order for a controlled substance that exceeds
18 its threshold.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

3 So once again, when a customer is
4 approaching a threshold, we're going to contact
5 the customer and let them know you're
6 approaching a threshold --

7 MR. PYSER: Object to form.

8 Q. -- right?

9 A. At some point, that became part of
10 the practice, yes. They wouldn't receive this
11 detail information or the analytics behind it.

12 Q. But they'd know that they were
13 approaching a threshold? Yes?

14 A. Yes.

15 MS. QUEZON: Okay. All right.

16 And if we can go to 508.

17 - - -

18 (Cardinal-Carney Exhibit 27 marked.)

19 - - -

20 BY MS. QUEZON:

21 Q. Just let me know when you've had
22 the opportunity to look at the document.

23 A. Okay. I have it.

24 Q. All right. First of all, were you

1 aware that Cardinal Health had agreed to a
2 \$44 million settlement for alleged violations of
3 the Controlled Substances Act in or around
4 December of 2016?

5 A. Sometime after that, I did become
6 aware of it, yes.

7 Q. Were you provided by Cardinal with
8 any of the details of the investigation or what
9 was alleged that Cardinal had done wrong?

10 A. I was not.

11 MR. PYSER: I'll caution you in
12 answering not to reveal any
13 communications with counsel.

14 MS. QUEZON: Of course.

15 BY MS. QUEZON:

16 Q. And specific to Cardinal, I don't
17 want to know anything that your attorneys may or
18 may not have told you.

19 A. Right. I was not by Cardinal.

20 Q. Okay. So, again, we looked at the
21 2008 events, the 2012 events. We've got this
22 settlement. Throughout each and every one of
23 them, you were never given by Cardinal the
24 details and the facts and circumstances that led

1 up to the suspensions or the fines?

2 A. I don't recall how I became aware
3 of --

4 Q. Lakeland?

5 A. Yes. It could have been through a
6 conference call. The same -- the same with
7 this. But nothing official sent to me from ...

8 Q. And I'm more concerned about
9 whether or not the details of what was alleged
10 that Cardinal had done wrong.

11 A. Yes, I have not.

12 Q. Okay. And here on the second page
13 of it, it basically states, "The settlement
14 resolves allegations arising from an
15 investigation in Maryland as well as an
16 administrative proceeding related to conduct in
17 Florida. According to the settlement
18 agreement" -- which I assume you have not seen.
19 Have you seen the settlement agreement?

20 A. I have not.

21 Q. -- "Cardinal admitted that from
22 January 1, 2009, to May 14, 2012, it failed to
23 report suspicious orders to the DEA as required
24 by the Controlled Substances Act. The

1 settlement also resolves allegations that
2 Cardinal failed to maintain effective controls
3 against diversion."

4 Were you aware that they had
5 admitted failing to follow the Controlled
6 Substances Act?

7 MR. PYSER: Object to form.

8 Misstates evidence.

9 A. I was not.

10 MS. QUEZON: Mr. Carney, I don't
11 have any more questions of you. My
12 co-counsel, Mr. Lamb, is going to take
13 over. But we may need just a quick five
14 minutes to switch places. Is that okay?

15 MR. PYSER: That's fine.

16 MS. QUEZON: Thanks.

17 THE VIDEOGRAPHER: The time is now
18 2:07. Going off the record.

19 (Recess taken.)

20 THE VIDEOGRAPHER: The time is now
21 2:13. Back on the record.

22 - - -

23 CROSS-EXAMINATION

24

1 BY MR. LAMB:

2 Q. Mr. Carney, my name is Archie
3 Lamb. I am co-counsel with Ms. Quezon. I've
4 got a few questions. She touched on a very
5 comprehensive list of the questions we had for
6 you. I'm primarily going to focus on West
7 Virginia. And this is not going to last a whole
8 long time.

9 Are you from West Virginia
10 originally?

11 A. Yes, I am.

12 Q. And I know you live in Wheeling
13 you told us. Is that where your home --

14 A. Yes, born and --

15 Q. -- hometown is?

16 A. Yes.

17 Q. You were born and raised there?

18 A. Yes.

19 Q. How old were you when you went to
20 work at Cardinal in 1988?

21 A. I would have been 23, 24 years
22 old.

23 Q. And so it's 30 years --

24 A. Thirty years.

1 Q. -- of employment?

2 A. Yes.

3 Q. Would you agree with me that the
4 opioid epidemic has reached tragic proportions
5 in the State of West Virginia?

6 A. Absolutely.

7 Q. And did you see the CEO,
8 Mr. Barrett, testify in front of Congress a few
9 months ago?

10 A. I did.

11 Q. And have you seen the letter that
12 the -- Mr. Walden and Mr. Pallone sent to
13 Mr. Barrett inquiring as to some questions about
14 the West Virginia and Cardinal's role in the
15 opioid epidemic in West Virginia?

16 Have you seen that letter?

17 A. I have not.

18 MR. LAMB: Let's show him
19 Plaintiff's Exhibit 43, P1.43.

20 - - -

21 (Cardinal-Carney Exhibit 28 marked.)

22 - - -

23 BY MR. LAMB:

24 Q. Let's show him Plaintiff's

1 Exhibit 43, P1.43.

2 We'll give you a chance just to
3 peruse that document. And let me know when
4 you're ready --

5 A. Sure.

6 Q. -- for me to ask a question.

7 A. Sure.

8 MR. PYSER: And for the record,
9 it's marked 28 in this deposition?
10 We're using a couple different numbers.
11 I just want to make sure we have the
12 right one. Is that right?

13 MR. LAMB: Is it marked 28? I'm
14 her assistant.

15 A. Okay. Sir, I think I have it.

16 Q. Have you seen that document before
17 I handed it to you today?

18 A. I have not.

19 Q. Are you familiar with the
20 statistics cited in that document?

21 A. Somewhat, yes.

22 Q. For what period of time -- and I
23 apologize for -- I'm just trying not to rehash
24 anything that Ms. Quezon talked about.

1 For what period were you -- what
2 was your job in the 2000s? What was your job
3 title?

4 A. From 2010 to date, I was the
5 director of sales. But during this time period
6 of 2000 to 2010, I would have been a sales
7 manager, but not in West Virginia.

8 Q. Where?

9 A. In Ohio.

10 Q. So tell me what areas you would
11 have covered in Ohio.

12 A. The entire State of Ohio. The
13 northern panhandle of West Virginia, and
14 southern West Virginia, and a small sliver of
15 western Pennsylvania.

16 Q. And after 2010?

17 A. I was the director overseeing
18 all --

19 Q. Of West Virginia?

20 A. All of West Virginia, Ohio,
21 Pennsylvania.

22 Q. Let's go to the first page, second
23 paragraph. It says, "For example, in 2015, West
24 Virginia had the highest opioid overdose rate in

1 the nation."

2 Were you aware of that?

3 A. Yes, I was.

4 Q. It goes on to say that in West
5 Virginia, it's caused many social challenges for
6 its residents and devastated its economy.

7 Do you agree with that?

8 MR. PYSER: Object to form.

9 A. The challenges, yes. The economy,
10 not so much.

11 Q. Have you -- I don't understand.
12 Not so much what? You don't agree with that?

13 A. I don't agree that it's been the
14 opioid epidemic that's ruined the economy in
15 West Virginia.

16 Q. Do you agree that the opioid
17 epidemic has a significant negative impact on
18 the economy in West Virginia?

19 MR. PYSER: Object to form. Calls
20 for expert testimony.

21 A. An impact, yes. How significant,
22 I wouldn't know, sir.

23 Q. It says between 2007 and 2012,
24 Cardinal Health, your company, distributed

1 155 million doses of hydrocodone and 85 million
2 doses of oxycodone.

3 Do you agree with those numbers?

4 A. Do I agree that those numbers
5 happened?

6 Q. Are accurate?

7 A. Yes, sir.

8 Q. Would you agree with me that in a
9 state of a population of 1.8 million, that is an
10 excessive supply of hydrocodone and oxycodone
11 for that state?

12 MR. PYSER: Object to form. Calls
13 for speculation and expert testimony.

14 A. I would -- I would have no way of
15 knowing what the patients' needs were.

16 Q. You have no idea?

17 A. I have no way of knowing what the
18 patients' needs for these medications were.

19 MR. PYSER: Counsel, please let
20 him finish his answer.

21 Q. We'll come back to that in a
22 minute. I want to ask you a couple other
23 questions first.

24 MR. LAMB: Let's show him P1.4969.

1 We'll come back to that in a
2 minute. That's all right. Just take
3 your time. You don't have it? Okay.

4 Go to 4970.

5 - - -

6 (Cardinal-Carney Exhibit 29 marked.)

7 - - -

8 BY MR. LAMB:

9 Q. Again, Mr. Carney, take your time
10 and let me know when you've reviewed the
11 document and are ready to answer questions.

12 A. Yes, sir.

13 MR. PYSER: Object to the
14 introduction of the hearsay in this news
15 article.

16 A. Okay.

17 Q. Okay. So do you know or familiar
18 with Dr. Diane Shafer who's referenced in this
19 article?

20 A. I am not.

21 Q. And do you know where the -- where
22 Mingo County, West Virginia is?

23 A. It's in southern West Virginia.

24 Q. And was it a part of your -- is it

1 presently a part of your area --

2 A. Yes.

3 Q. -- sales area?

4 A. Yes, sir.

5 Q. Have you -- are you familiar with
6 any of the matters discussed in here relative to
7 her misconduct, her going to prison, excessive
8 supply of opioids to her patients? Are you
9 familiar with that?

10 MR. PYSER: Object to form.

11 A. No, I'm not.

12 MR. PYSER: You can answer the
13 question.

14 A. No, I'm not.

15 Q. You are aware that during the
16 period of time that you were a sales director in
17 Ohio, and now as a sales manager in Ohio and
18 West Virginia, that there have been pill mills
19 and doctors excessively prescribing drugs in a
20 medically unnecessary way? You're aware of
21 that, aren't you?

22 MR. PYSER: Object to form.

23 A. Yes.

24 Q. Thank you.

1 MR. LAMB: Let's look at 4969.

2 - - -

3 (Cardinal-Carney Exhibit 30 marked.)

4 - - -

5 BY MR. LAMB:

6 Q. Let me know when you're ready.

7 A. Sure.

8 MR. PYSER: Same objections to the
9 introduction of this exhibit.

10 A. I have it.

11 Q. Are you familiar with the
12 prosecution of Ms. Miller who is the office
13 manager or Dr. Ryckman who is the doctor
14 fraudulently filling out prescriptions for
15 medications; benzodiazepines and opioids?

16 A. I was not.

17 Q. You're not familiar with any of
18 these people?

19 A. No, sir.

20 Q. Were you aware of this prosecution
21 before you read this article?

22 A. I was not.

23 MR. LAMB: Let's go to 571.

24 - - -

1 (Cardinal-Carney Exhibit 31 marked.)

2 - - -

3 BY MR. LAMB:

4 Q. Is Madison, West Virginia in your
5 area?

6 A. Yes, sir.

7 Q. Okay.

8 MR. PYSER: Again, object to the
9 introduction of this exhibit.

10 A. I believe I have it now.

11 Q. You are aware, are you not, that
12 there is a federal obligation under the
13 Controlled Substances Act for Cardinal to report
14 suspicious orders, correct?

15 A. Yes.

16 Q. And then there's a state
17 obligation and law under which Cardinal is
18 supposed to [sic] suspicious orders under state
19 law to the pharmacy board as well; isn't that
20 correct?

21 MR. PYSER: Object to form. Legal
22 conclusion.

23 A. I believe so, yes.

24 Q. Okay. And all I'm asking for is

1 your understanding.

2 A. Yes, sir.

3 Q. I mean, you're -- you understand
4 that you have obligations related to reporting
5 suspicious orders. We've established that
6 ad nauseam in Ms. Quezon's questioning. And one
7 of those is a state requirement, and one of
8 those is a federal requirement, and you know
9 that.

10 MR. PYSER: Object.

11 Q. You've known that the whole time
12 you've been a sales director, correct?

13 MR. PYSER: Object to form.

14 A. Yes.

15 Q. Okay. Now, this says -- this
16 article says that between 2001 and June of 2012,
17 the pharmacy board only received two reports of
18 suspicious orders from Cardinal Healthcare.

19 Does that make sense to you?

20 MR. PYSER: Object to form.

21 A. Does it make sense to me? No.

22 Q. Explain that to me.

23 A. Because I -- I'm -- it's -- again,
24 I'm in the -- in the sales portion of it. So

1 that would be the QRA's and the compliance
2 department's responsibilities. And why they
3 didn't do that or if they didn't do that, I -- I
4 couldn't speculate.

5 Q. Well, your salespeople are
6 integral to the process of collecting
7 information and data. You're the eyes and ears
8 of the organization relative to pill mills and
9 inappropriate conduct relative to dispensing
10 narcotics; isn't that correct?

11 MR. PYSER: Object to form.

12 A. Yes, sir.

13 Q. And so to that end, does it make
14 sense to you that there would be only two
15 reports in an 11-year period of time by Cardinal
16 Healthcare to the pharmacy board in West
17 Virginia?

18 A. I only know what we reported in
19 through QRA and what would have been flagged as
20 suspicious orders. And then that -- the QRA
21 department was to handle it from there. It's
22 not sales that sends the reports to the --

23 Q. You would agree --

24 A. -- state board.

1 Q. I'm sorry. Were you finished?

2 A. I am now, yes, sir.

3 Q. You would agree with me that given
4 the volume of narcotics distributed in West
5 Virginia between 2000 and 2012, there were more
6 than two suspicious orders delivered in West
7 Virginia by Cardinal Healthcare? You would
8 agree with that, wouldn't you?

9 MR. PYSER: Object to form.

10 A. Yes.

11 Q. Does it make sense to you that
12 after the Attorney General filed lawsuits
13 against Cardinal, that they began to send
14 suspicious orders at the rate of about 40 per
15 month? Does that make sense to you?

16 MR. PYSER: Object to form.

17 A. I can't speculate on what makes
18 sense to me, sir.

19 Q. Okay. That's fair.

20 A. I would just -- I would say
21 that --

22 Q. That's -- that's fair.

23 You became director of sales of
24 West Virginia and Ohio in 2010; is that correct?

1 MR. PYSER: Counsel, please let
2 him finish his answers before you ask
3 the next question.

4 MR. LAMB: I thought he was done.

5 BY MR. LAMB:

6 Q. Let me tell you this: If I
7 interrupt you, it's an accident. And I want to
8 be sure that you know that.

9 A. Sure.

10 Q. So I apologize if I've stepped on
11 your answer.

12 A. Sure.

13 Q. But go ahead.

14 A. It was January of 2011, yes.

15 Q. Okay. But the point I'm trying to
16 make is, the change in the volume of suspicious
17 orders occurred during your time at the helm of
18 the director of sales of West Virginia and Ohio,
19 correct?

20 A. I'm not aware of that, sir.

21 Q. Okay. Are you -- are you telling
22 us that you have no idea when suspicious orders
23 are reported?

24 MR. PYSER: Object to form.

1 A. That I have no idea when a
2 suspicious order is reported? No, I do have an
3 idea of when we're contacted, that the order has
4 been held, yes.

5 Q. So if it's a suspicious order, the
6 obligation is to report it and not to ship it
7 until QRA has approved the shipment, correct?

8 A. Correct.

9 Q. And your salespeople get paid by
10 volume of product delivered to the pharmacies,
11 correct?

12 MR. PYSER: Object to form.

13 A. Not necessarily. Not -- not
14 entirely, no.

15 Q. Okay. Well, let's unpack that a
16 little bit.

17 Do they get paid commission for
18 volume of narcotics sold?

19 A. They're paid on a base salary and
20 according to a budget set for retention topline
21 sales.

22 Q. And we've heard a lot about that
23 budget stuff. But my question is, is their
24 compensation at all based on volume sold?

1 A. Based on the budget, yes.

2 Q. What's that mean?

3 A. That means that a certain number
4 is set each year based on the previous year's
5 sales, and a budget is created off of that, and
6 you're paid to hit that budget.

7 Q. Well, are you paid to hit it, or
8 are you paid to exceed it?

9 A. You're paid to hit it.

10 Q. But you've got to hit it right on
11 the button, like --

12 A. If you're under, you're not
13 compensated, but you're paid to hit the budget.

14 Q. Are you -- are you compensated
15 more if you exceed the budget in volume?

16 A. Yes, sir.

17 Q. That's all I'm trying to figure
18 out.

19 A. Yes.

20 Q. It's a commission deal, right?

21 A. A portion --

22 Q. They get paid on volume.

23 MR. PYSER: Counsel, just let him
24 finish.

1 A. A portion of their compensation is
2 paid on the volume that they sell, yes, sir.

3 Q. And so the more they sell, the
4 more they make?

5 A. The higher they are -- they come
6 in above the budget, the more that they would
7 make, yes, sir.

8 Q. All right. Is that a yes?

9 A. Yes, sir.

10 Q. Okay. Are you familiar with Tug
11 Valley Pharmacy?

12 A. I've seen it in the news, yes, I
13 have.

14 Q. Tell me what you've seen about it
15 in the news.

16 A. That it's a -- it's a pharmacy
17 that was diverting prescription drugs, yes.

18 Q. And over what period of time was
19 Tug Valley Pharmacy diverting prescription drugs
20 in Mingo County, West Virginia?

21 A. I'm not exactly sure. They
22 weren't a customer of ours.

23 Q. You never delivered any drugs to
24 Tug Valley Pharmacy?

1 A. Not that I know of, sir.

2 Q. Okay. How about to Larry's

3 Drive-In?

4 A. It was a customer of ours for a
5 time.

6 Q. That was a pill mill, wasn't it?

7 MR. PYSER: Object to form.

8 A. Not that I know --

9 MR. PYSER: You can answer.

10 Q. Go ahead.

11 A. Not that I know of, sir.

12 Q. You don't think Larry's
13 pharmacy -- Larry's Drive-In was a pill mill?

14 MR. PYSER: Object to form.

15 A. I don't have a -- an opinion on
16 whether it was a pill mill or not, no.

17 Q. Well, as director of sales for
18 Cardinal Healthcare, do you have an opinion on
19 what a pill mill is?

20 A. What the term "pill mill" refers
21 to?

22 Q. Yeah.

23 A. Yes, yes.

24 Q. What -- give me your definition.

1 A. It's kind of a slang term for a
2 pharmacy that is just rolling out pills.

3 Q. And during the period of time from
4 2000 to 2010 when you were sales manager in
5 Ohio, did Cardinal Healthcare deliver to pill
6 mills?

7 A. Not that I know of, sir.

8 Q. You have no idea --

9 A. I have no idea.

10 Q. -- as you sit here?

11 A. As I sit here.

12 Q. Would you agree with me that it
13 would be inappropriate and illegal for Cardinal
14 Healthcare to deliver to a pill mill if they
15 knew it was, indeed, behaving illegally?

16 MR. PYSER: Object to form.

17 A. Yes. If they came up as
18 suspicious order, and they were -- they showed
19 that they were something other than an
20 independent retail pharmacy, yes.

21 Q. Well, as you say, rolling out
22 pills in excessive quantities is illegal, isn't
23 it?

24 MR. PYSER: Object to form.

1 A. I can't speak to the legality of
2 the number of pills. We deliver FDA-approved
3 medications to licensed independent pharmacies
4 that have a patient base in need of those
5 medications.

6 Q. But you have an obligation to
7 monitor, investigate, and halt shipments that
8 are suspicious in order or deviate in a pattern?
9 You have an obligation to assess that and report
10 that and not ship it if you know that those
11 criteria are met? That's your obligation,
12 right?

13 MR. PYSER: Object to form.

14 Compound question.

15 A. Yes, it is.

16 Q. It is. It's too many questions,
17 but I'm just trying to get --

18 A. Yes, it is, and we've done that.

19 Q. Okay.

20 A. I believe we've done that.

21 Q. You're satisfied that Cardinal
22 Healthcare has never failed in its obligation to
23 report suspicious orders during the period of
24 time you've been involved as a sales manager or

1 sales director?

2 A. I can speak for the Wheeling
3 division and the territories that fell under my
4 purview, and I can say that I'm satisfied that
5 we did the best we could.

6 Q. In a typical month, how many
7 suspicious orders would you report both in the
8 2000 and 2010 time frame and since you've become
9 sales director?

10 A. I, myself, wouldn't report any,
11 sir.

12 Q. How many have been reported on
13 pharmacies under your jurisdiction during that
14 18-year period of time?

15 A. Not exactly sure.

16 Q. Give me a judgment as to -- and I
17 don't want you to speculate. But you have no
18 earthly idea how many suspicious orders on a
19 monthly basis at any time during that period
20 would have been reported on your pharmacies?

21 MR. PYSER: Object to form.

22 Argumentative.

23 A. It would be speculation on my
24 part. I have no idea.

1 Q. Okay. And it's argumentative on
2 my part. I'm just trying to figure out how
3 many, in your best judgment, you would report on
4 a regular basis.

5 MR. PYSER: Object to form.

6 A. I don't want to speculate.

7 Q. What sort of training did you
8 receive and what sort of information were you
9 given after the company paid \$34 million in 2008
10 for the Lakeland fiasco?

11 MR. PYSER: Object to form.

12 Q. What did they tell you about it?
13 Did you have meetings about it? Were you
14 trained on it? Were you educated about it? Did
15 they explain to you what had happened?

16 A. About Lakeland?

17 MR. PYSER: Object to form.

18 Q. Yeah.

19 A. No, no.

20 Q. Never talked to you about it?

21 A. We've had training on preventing
22 prescription drug diversion, but not specific to
23 Lakeland.

24 Q. Y'all never sat down with anybody

1 in leadership and said, "This is what happened
2 in Lakeland. We can't do this here"? That
3 never happened?

4 MR. PYSER: Object to form.

5 A. Not to my -- not to my knowledge,
6 no.

7 Q. Well, you would have been there
8 so ...

9 A. Yep. No.

10 Q. Didn't happen?

11 A. Didn't happen.

12 MR. PYSER: Object to form.

13 MR. LAMB: Let's go to the .6 --
14 1.5716, Zach. It's the last page.

15 BY MR. LAMB:

16 Q. Talking about the Larry's Drive-In
17 Pharmacy in Boone County, that's your customer,
18 right?

19 A. He has been a customer of ours in
20 the past, yes.

21 Q. And this says that the Attorney
22 General of West Virginia filed a lawsuit
23 claiming that Larry's Drive-In Pharmacy had
24 blindly filled suspicious prescriptions and

1 dispensed extraordinary number of pills,
2 10 million doses in 11 years.

3 Do you agree with that?

4 MR. PYSER: Object to form.

5 A. Can you ask me that question
6 again?

7 Q. Yeah.

8 Do you agree that Larry's Drive-In
9 Pharmacy dispensed 10 million doses of pain
10 pills in an 11-year period of time?

11 A. If that's what the numbers say,
12 then, yes, sir.

13 Q. And why wouldn't that have been a
14 suspicious order reported by Cardinal
15 Healthcare?

16 MR. PYSER: Object to form. It's
17 unclear if Cardinal was serving them in
18 this time.

19 Q. That's all right. I'm just -- if
20 Cardinal had been supplying that volume of
21 drugs, would you agree with me that that should
22 be reported as a suspicious order?

23 MR. PYSER: Object to form. Calls
24 for speculation.

1 A. If we would have been supplying --

2 Q. Yes.

3 A. -- all of those pills in that
4 time?

5 Q. Yes.

6 A. I couldn't speculate, sir. It
7 would be up to -- or it would be determined upon
8 his patient base.

9 Q. And no matter how many people live
10 there?

11 MR. PYSER: Object to form.

12 Q. I mean, how do you decide what is
13 an excessive volume, a volume that causes one to
14 be suspicious and report under the Controlled
15 Substances Act obligation to do so?

16 A. Again, I'm in the sales
17 department, so I'm not the expert on this. It's
18 the QRA department's responsibility to put
19 together those things like those advanced
20 analytics, the frequency, the pattern, and the
21 volume of the purchases.

22 Q. So you've never been trained in
23 these advanced analytics. You've never had
24 training relative to what you -- what you see,

1 what you observe, what you should report to QRA
2 to serve as the basis, the factual basis, of
3 this conclusion that they make? You've never
4 had training on that?

5 MR. PYSER: Object to form.

6 A. Yes, we have had training.

7 Q. Okay. That's what I'm trying to
8 get to.

9 At what point and at what level
10 does the volume sold -- like 10 million doses in
11 11 years, there should be some criteria, I would
12 think, that would let you make a decision, an
13 educated decision, on whether that's something
14 you ought to report to QRA or not?

15 MR. PYSER: Object to form.

16 A. Again, the decisions on what
17 constituted suspicious orders were determined by
18 the QRA department as the orders came in.

19 Q. Yeah, but you had to -- you had to
20 tell them what you thought at some point. Your
21 people had to be trained to report to them --

22 MR. PYSER: Object to form.

23 Q. -- right?

24 A. If we saw something that was out

1 of the ordinary that we talked about in that
2 training with lines and things like this, yes.

3 Q. Yeah. And that's what I'm trying
4 to get at. At what point does the volume of
5 drugs in a given population rise to the level of
6 something that you ought to delve into and/or
7 report to QRA?

8 MR. PYSER: Object to form.

9 A. I guess when it surpasses the
10 number of patients that they have, but. That's
11 not information that we in the sales department
12 were making determinations on. That was
13 strictly on the QRA department.

14 Q. So how do you decide whether to
15 report them to QRA or not?

16 A. Again, when the volume of the
17 orders exceed the frequency or out of ordinary
18 with the frequency, the pattern, or the size of
19 the drugs, that's picked up as the orders come
20 through the computer.

21 Q. All right. Well, let's talk about
22 volume then.

23 MR. LAMB: Let's go back to

24 Exhibit 43.2. Family Discount Pharmacy.

1 Roman Numeral I, Zach. Above that
2 paragraph, please.

3 BY MR. LAMB:

4 Q. Let me know when you get there,
5 Mr. Carney.

6 A. That's this one here?

7 Q. Yes, sir.

8 A. Exhibit 28?

9 Q. Yes, sir. Sometimes I'm going to
10 refer to the --

11 A. The top?

12 Q. Yes, sir.

13 A. Gotcha.

14 Q. But it helps the record if you
15 tell -- if I don't tell you what the yellow
16 number is, it would help the record if you
17 articulate both so we don't get sideways on
18 that.

19 So let me just read this to save a
20 little bit of time.

21 Family Discount Pharmacy, was that
22 a customer of yours?

23 A. It was.

24 Q. Do you know where Mount

1 Gay-Shamrock, West Virginia, is?

2 A. I do.

3 Q. Is that in southern West Virginia
4 or northern West Virginia?

5 A. It's in southern West Virginia.

6 Q. So it wouldn't have been a part of
7 your sales territory in the 2000-2010, but it
8 would be part of your territory now?

9 A. From '11 until now, yes.

10 Q. Okay. Did you at any time between
11 2007 and 2012 -- recognizing that you weren't
12 sales director until '11, '12, but are you
13 familiar with reports of suspicious orders at
14 Family Discount Pharmacy in Mount Gay being
15 reported by Cardinal Healthcare?

16 A. I can't say for sure. I know that
17 at some point in 2012, we decided to cut them
18 off. But I can't say for sure that I'm familiar
19 with --

20 Q. Sometime in when?

21 A. The end of 2012.

22 Q. Did you decide to report them
23 after the DEA started investigating them or
24 before?

1 A. We would have reported them any
2 time that we received a suspicious order.

3 Q. Did you terminate them after the
4 DEA let you know they were investigating them or
5 before?

6 A. I don't recall.

7 Q. You would agree with me that
8 16,591,000 doses over a 10-year period of time
9 of hydrocodone and oxycodone to a population of
10 1,779 would be excessive under any
11 circumstances --

12 MR. PYSER: Object to form.

13 Q. -- correct?

14 A. I don't know that the
15 population -- just as a population of that town
16 was part of his customer base or her customer
17 base.

18 Q. Okay.

19 A. It could have been drawing from
20 surrounding areas.

21 Q. Well, let's say it was 10,000
22 people. Would 16,590,000 doses be excessive in
23 your opinion?

24 A. I really can't say, sir.

1 Q. But there is some mathematical
2 relationship between population and dosage units
3 sold that ought to weigh into the decision by
4 Cardinal Healthcare whether or not to report
5 suspicious activity? You agree with that, don't
6 you?

7 MR. PYSER: Object to form.

8 A. No, I don't agree with that.

9 Q. Well, tell me what you disagree
10 with?

11 A. That we should strictly base that
12 pharmacy's need for these medications on how
13 many folks are in that particular town.

14 Q. Would you agree with me that it's
15 a relevant factor that ought to be considered?

16 A. I really can't say, sir. I don't
17 make those kind of decisions.

18 Q. Do you agree with me that an
19 excessive supply, given population, enhances the
20 likelihood of illegal diversion?

21 MR. PYSER: Object to form.

22 A. I couldn't speculate on that, sir.

23 Q. You have no opinion one way or the
24 other?

1 A. I couldn't speculate on it, no.

2 Q. So let's go to the next paragraph.

3 Do you know what ARCOS data is? That acronym,
4 ARCOS?

5 A. Yes. It's an automated reporting
6 system.

7 Q. Yeah. "Over a five-year period,
8 the ARCOS data showed that Cardinal Healthcare
9 supplied Family Discount Pharmacy with
10 6.5 million hydrocodone and oxycodone pills."

11 Do you have any reason to disagree
12 with that?

13 A. Nope. No, sir.

14 Q. And that "3,561 hydrocodone and
15 oxycodone pills were delivered every day to
16 Family Discount Pharmacy."

17 Is that what that says?

18 MR. PYSER: Object to form.

19 A. If pills were delivered every day,
20 that would be the math. But I don't know that
21 that many pills were delivered every day.

22 Q. Well, we do know that 6.5 million
23 pills were delivered over that five-year period
24 of time --

1 A. Yes.

2 Q. -- they were just doing an
3 extrapolation of the numbers to get a daily
4 average?

5 A. Yes, sir.

6 Q. Would you agree with me that 731
7 opioid pills per person is an excessive
8 amount --

9 MR. PYSER: Object to form.

10 Q. -- of opioids?

11 MR. PYSER: Object to form.

12 Q. 731 pills per year, is that an
13 excessive amount of opioids per person?

14 MR. PYSER: Object to form.

15 A. If that were the customers --
16 well, again, it's based on how many patients had
17 a need for these medications at this pharmacy.
18 They extrapolate here that it would be, you
19 know, just using the population of Mount Gay.

20 Q. And you think that's an
21 inappropriate way to make these calculations?

22 A. Yes, sir. Yes, sir, I do.

23 Q. So you do not think that's an
24 excessive supply of opioids?

1 MR. PYSER: Object to form.

2 Misstates. Mischaracterizes his
3 testimony.

4 MR. LAMB: I'm asking him --

5 A. Without knowing the number of
6 patients, no.

7 Q. So I assume you have the same
8 answer if going to the next page, Family
9 Discount delivered over 1.3 million dosage units
10 each year in 2010 and 2011? You still don't
11 think that's an excessive supply of drugs for a
12 town of 1,779 people?

13 A. I have no way of knowing, sir.

14 Q. Take a look at the table on page
15 43.3.

16 Would you agree with me that 6.4
17 million pills over a five-year period of time
18 would be excessive supply and create the
19 likelihood of illegal diversion in a town of
20 1,779 people?

21 MR. PYSER: Object to form.

22 Q. Would you agree with that?

23 A. I would not.

24 Q. You would not agree with that?

1 A. No.

2 Q. It doesn't enhance the likelihood
3 of illegal diversion in your opinion?

4 A. I have no way of knowing.

5 MR. PYSER: Object to form.

6 Q. I'm sorry?

7 A. I have no way of knowing.

8 Q. And you've been with this company
9 30 years, and you have no way of knowing?

10 A. Correct.

11 MR. PYSER: Object to form.

12 MR. LAMB: Too late.

13 Kidding. Just kidding.

14 MR. PYSER: I'm trying not to step
15 on you.

16 BY MR. LAMB:

17 Q. Do you know who Hurley -- do you
18 know who Hurley Drug Company is? Have you -- is
19 that a customer of yours?

20 A. Yes, sir, they were.

21 Q. And have they ever been cited by
22 Cardinal Healthcare, to your knowledge --

23 A. Yes, sir, they have.

24 Q. -- for -- now, you're stepping on

1 me.

2 A. Sorry.

3 Q. Let me start again just to make
4 the record clear.

5 Has Hurley Drug Company ever been
6 cited for suspicious orders by Cardinal
7 Healthcare under Cardinal's obligation under the
8 Controlled Substances Act to report such an
9 order?

10 A. Yes, they have.

11 Q. And on how many occasions?

12 A. I can't tell you how many
13 occasions exactly over time, but I'm aware that
14 they have hit thresholds, yes.

15 Q. Have you terminated Hurley Drug as
16 a customer?

17 A. Yes, we have.

18 Q. Do you know when that would have
19 happened?

20 A. Years ago. Not exactly sure.

21 Q. Would you have terminated them
22 before the DEA began investigating them?

23 A. If their purchasing habits rise to
24 the level in which they put us at risk for

1 diverting drugs, we would have, yes.

2 Q. But as you sit here, you don't
3 know whether the DEA notified you that they were
4 investigating them before you terminated them or
5 not?

6 A. I don't know, but I don't believe
7 so.

8 Q. Williamson County's population was
9 3,191 people in 2010. If Cardinal Healthcare
10 provided Hurley Drug with 537,000 doses of
11 hydrocodone and oxycodone, would that in and of
12 itself trigger a suspicious order report based
13 on the criteria that you've been trained to base
14 such decisions on at Cardinal Healthcare?

15 A. I just -- the population in any
16 given town wasn't part of the criteria.

17 Q. Would you agree with me that it
18 ought to be included in an analysis at some
19 level?

20 MR. PYSER: Object to form.

21 A. I have no opinion on whether or
22 not it should be included. It's been my
23 experience over the years that pharmacies
24 service patients from outside the town, outside

1 their county.

2 Q. Do you know what the Oxy Express
3 is?

4 A. No, I do not.

5 Q. You've never heard of that term?

6 A. No, I have not.

7 Q. Twenty years in sales with
8 Cardinal and you've not heard the term "Oxy
9 Express"?

10 A. No, I have not.

11 MR. PYSER: Object to form. Asked
12 and answered.

13 Q. Well, the DEA certainly thinks
14 that population is an important criteria when
15 assessing whether or not a pharmacy's behavior
16 violates suspicious order criteria, correct?

17 MR. PYSER: Object to form.

18 A. I don't know that.

19 MR. LAMB: 43.4, the last
20 paragraph just before the footnotes
21 begin, Zach, "according."

22 BY MR. LAMB:

23 Q. "According to the U.S. Census
24 data, Williamson's population was 3,191 in 2010.

1 Therefore, the amount of hydrocodone and
2 oxycodone shipped to Hurley Drug Company appears
3 to be potentially excessive when compared to the
4 population in that area."

5 Would you agree with me that at
6 least the authors of this letter to your CEO
7 believe that population is relevant?

8 MR. PYSER: Object to form. Calls
9 for speculation.

10 A. Was that -- that was written by
11 the DEA and not --

12 Q. That was written by the
13 congressman that sent this letter to
14 Mr. Barrett --

15 MR. PYSER: Object to form.

16 Q. -- based on information they
17 attained -- obtained from the DEA.

18 MR. PYSER: Object to form.

19 A. So it has been written somewhere
20 by the DEA that --

21 Q. Here's my question.

22 A. -- when compared to the
23 population -- was this written by the DEA?

24 Q. We'll get to a lot of things with

1 the DEA.

2 My question to you is, is that
3 what that paragraph says?

4 MR. PYSER: Object to form.

5 A. Yes.

6 Q. Thank you.

7 Do you know who Joe Rannazzisi is?

8 A. Yes.

9 Q. Have you met him?

10 A. Never.

11 Q. You haven't?

12 A. No, I have not.

13 Q. You've never attended a
14 presentation that DEA made to Cardinal Health
15 about anti-diversion or any of those types of
16 subject matters?

17 A. Yeah, I have not.

18 MR. LAMB: Let me see 4050 and
19 4088.

20 MS. QUEZON: They've been marked.

21 MR. LAMB: Oh, okay. That's
22 right. The two Rannazzisi letters.

23 MS. QUEZON: Yes. They're marked.

24 Number 6 is the first one, I believe.

1 MR. PYSER: Why don't we take a
2 break while we figure this out since
3 we've been going about an hour.

4 THE VIDEOGRAPHER: The time is now
5 3:10. Going off the record.

6 (Recess taken.)

7 THE VIDEOGRAPHER: Okay. The time
8 is now 3:28. Back on the record.

9 BY MR. LAMB:

10 Q. Mr. Carney, before we went off the
11 record --

12 MR. LAMB: Did you have both of
13 the -- did you have both of these?

14 MR. PYSER: You're looking for
15 Exhibit 6 and 10?

16 MR. LAMB: Yes. May I look at
17 them to make sure I have the right
18 thing?

19 THE WITNESS: Sure.

20 MR. LAMB: Okay. Yes.

21 BY MR. LAMB:

22 Q. So Exhibit 6 is a letter dated
23 September 27, '06, and Exhibit 10 is a letter
24 from Mr. Rannazzisi of December 27, 2007. And

1 you -- I'm not going to ask you a bunch of
2 questions, but you've looked at those already
3 when Ms. Quezon was talking.

4 I just want to establish a
5 predicate that you know who Mr. Rannazzisi is
6 even though you've never met him.

7 A. Yes.

8 Q. That's the point of -- he's the
9 author of those two letters.

10 A. Yeah.

11 Q. And, again, we're not going to
12 rehash -- recover that ground.

13 What I do want to go to is Exhibit
14 4658.

15 And let me know when you're ready,
16 Mr. Carney.

17 - - -

18 (Cardinal-Carney Exhibit 32 marked.)

19 - - -

20 MR. PYSER: Counsel, is this the
21 full document with the attachment?

22 MR. LAMB: It is -- that's a good
23 question. It's every page that I was
24 given when this document was produced.

1 MR. PYSER: Okay. So it was
2 produced --

3 MR. LAMB: I had the same
4 question. It doesn't seem to -- but I
5 was hoping he could tell us. But
6 they're sequential, as you can see, on
7 Bates numbers.

8 MR. PYSER: I do. I was just
9 wondering if it was cut off, but you can
10 ask.

11 MR. LAMB: We did not cut it off.
12 It's everything we had.

13 BY MR. LAMB:

14 Q. I don't want to interrupt you,
15 Mr. Carney, but can I ask you as you're
16 reviewing, have you seen this before? Do you
17 remember having seen this previously?

18 A. I don't remember.

19 Q. Okay.

20 A. Okay.

21 Q. Okay. So you do not remember
22 having seen this document?

23 A. I don't recall.

24 Q. Okay. But it is a document sent

1 to you by Mr. James Loudermilk; is that correct?

2 A. Yes, yes.

3 Q. And who is Mr. Loudermilk?

4 A. He's my administrative assistant.

5 Q. And then Mr. Lanctot is copied
6 here why?

7 A. He's my boss.

8 Q. Okay. And this would have been in
9 2013?

10 A. Yes.

11 Q. So you were the sales director of
12 Ohio and West Virginia at the time?

13 A. Yes, sir.

14 Q. It seems to cite a Congressional
15 statement made by Joe Rannazzisi of the DEA to a
16 committee headed by Senator Feinstein. Does
17 that accurately portray what it seems to be?

18 A. Yes, yes.

19 Q. And so what is the purpose of
20 Mr. Loudermilk highlighting -- and those are his
21 highlights that came with the original document,
22 not ours -- highlighting portions of the
23 Rannazzisi statement and sharing it with you, as
24 best you can tell reviewing this document? Why

1 was he sending it to you?

2 MR. PYSER: Object to form.

3 A. I seem to recall that, you know,
4 my concern around the epidemic and trying to
5 collect as much information about how it would
6 be described or how you would define it if
7 talking to customers. And this may have -- this
8 may have come from a -- a recording that
9 Mr. Rannazzisi did at one point, and I had James
10 print it out so I could send it to Chris.

11 Q. And, Mr. Carney, you say in the
12 cover e-mail, "Ruff, but the idea is to use
13 these as the TP to explain our position."

14 I don't want to assume what you
15 meant by that, but tell us what TP stood for.

16 A. Talking points --

17 Q. Okay.

18 A. -- when discussing the epidemic.

19 Q. Okay. And so, again, I ask you,
20 what did you do with this information?

21 A. I shared it with Chris. I may
22 have shared it with my sales managers to share
23 with our people.

24 Q. Why?

1 A. To explain the seriousness of the
2 situation.

3 Q. Let's look at the last page. Is
4 Region 1 in your area?

5 A. Region --

6 Q. In your -- in your jurisdiction?
7 Look at the last page, West Virginia, they have
8 Region 1. It talks about that five-county area.
9 That's in your sales territory in 2013, isn't
10 it?

11 A. I don't have that.

12 Q. You don't have the last page?

13 A. This document here (indicating)?

14 Q. Well, you should have the --

15 MR. PYSER: Now, Counsel, that's
16 what I was asking you about before. We
17 only have three pages.

18 MR. LAMB: Okay. I don't know
19 what I don't know.

20 We need a clean copy.

21 I'm sorry. I didn't understand.

22 I guess that would help. 4658.

23 MR. PYSER: We have 4658.1, .2,
24 and .3, but nothing beyond that.

1 MR. LAMB: Well, I've got 8.

2 Let me -- we will get a clean
3 copy. Let's go ahead and mark this so
4 you guys have the complete copy. I
5 apologize.

6 Well, it wouldn't be a deposition
7 if there weren't a glitch.

8 MR. PYSER: So just so we are
9 clear on the record, this getting marked
10 as what exhibit number?

11 MR. LAMB: What's the next,
12 Plaintiff's next?

13 MR. PYSER: He was just looking at
14 32.

15 MS. QUEZON: 33.

16 MR. PYSER: So this is 33. And
17 the highlighting and writing on 33 is
18 counsel's writing?

19 MR. LAMB: Yes, and that's -- but
20 I wanted him to have the complete
21 document. We'll give you a clean copy
22 without highlighting at the conclusion
23 of the deposition.

24 MR. PYSER: Understood.

1 - - -

2 (Cardinal-Carney Exhibit 33 marked.)

3 - - -

4 BY MR. LAMB:

5 Q. So I'll refer you to the last
6 page. It might be helpful for you to take a
7 minute and look at it.

8 A. Yes.

9 Q. And the question is, is Region 1
10 as depicted in that 4658.8 of Exhibit 33 -- are
11 those counties in your area --

12 A. Yes.

13 Q. -- in your jurisdiction?

14 A. Yes, they are.

15 Q. And this document is generated --
16 at the top of the page, you can see October of
17 2012, Mr. Carney; is that correct? The upper
18 left-hand corner?

19 A. Yes, sir.

20 Q. At the westvirginia.gov website?

21 A. Yes, sir.

22 Q. And read, if you would, please,
23 the writing in the bottom left-hand corner. It
24 starts with "West Virginia has seen a rise." If

1 you could read those three paragraphs, please.

2 A. "West Virginia has seen a rise in
3 prescription drug overdose deaths of nearly
4 230 percent since 2001. In the U.S., nearly
5 three out of the four prescription drug
6 overdoses are caused by prescription pain
7 killers, also called opioids pain killers.

8 "For the period of '06 to 2010,
9 prescription drug overdose deaths in Region 1
10 account for 6.9 percent of all overdose deaths
11 in West Virginia.

12 Region 1 ranked 3rd in the state
13 with an overdose death rate of 22.3 per 100,000
14 people compared to West Virginia's rate of 26.2
15 per 100,000 people. Individual county rates are
16 provided to the right."

17 I have a little more -- a better
18 line of sight on that, why we were putting this
19 together. We were putting it together for a
20 Generation Rx presentation to --

21 Q. Right.

22 MR. PYSER: Counsel, please let
23 him finish.

24 MR. LAMB: Oh, I'm sorry.

1 MR. PYSER: Were you done with
2 your answer?

3 A. Yeah, to folks in the community,
4 to churches and to schoolkids and things like
5 that. That's what we were putting together.
6 That's who the talking points were meant to. We
7 were trying to work that out.

8 Q. Would you agree with me,
9 Mr. Carney, that Cardinal in the way they have
10 distributed narcotics, specifically opioids, has
11 contributed significantly to the increase in
12 death rates as a result of opioid overdose in
13 West Virginia?

14 A. I can't say that, sir.

15 Q. What do you disagree with about
16 that?

17 MR. PYSER: Object to form.

18 A. That I believe we did our best to
19 have all of the safety nets in place to make
20 sure that those FDA-approved drugs were being
21 delivered to licensed independent retail
22 pharmacies for the need of legitimate patients.

23 Q. And would you agree with me that
24 if you failed to abide by your obligation to

1 monitor, investigate, and halt suspicious
2 orders, you would have violated your legal duty
3 under the Controlled Substances Act related to
4 the distribution of opioids?

5 MR. PYSER: Object to form. Calls
6 for legal conclusion.

7 A. If we failed.

8 MR. LAMB: Give me one second.

9 I don't have any further
10 questions.

11 MR. PYSER: Let's take five or ten
12 minutes.

13 MR. LAMB: Okay.

14 THE VIDEOGRAPHER: The time is now
15 3:41. Going off the record.

16 (Recess taken.)

17 THE VIDEOGRAPHER: All right. The
18 time is now 3:52. Back on the record.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. PYSER:

22 Q. Mr. Carney, my name is Steven
23 Pyser. I'm an attorney for Cardinal Health. I
24 have just a few questions for you today.

1 Can you tell us where you live
2 today?

3 A. I live in Wheeling, West Virginia.

4 Q. Is that where you're from
5 originally?

6 A. Yes, it is.

7 Q. Have you lived there your whole
8 life?

9 A. Yes, I have.

10 Q. Do you have a family in Wheeling?

11 A. I sure do.

12 Q. And can you tell me just
13 briefly -- your family in Wheeling, who lives
14 there?

15 A. Sure. My wife and I. We've been
16 married for 32 years. We have three daughters.
17 My mother lives there, and my brothers live
18 there, extended family.

19 Q. You talked today earlier about
20 your career at Cardinal Health. Before you came
21 to Cardinal Health -- well, let's start with how
22 old were you when you started at Cardinal
23 Health?

24 A. Twenty-two.

1 Q. So you were a young man.

2 What had you done before you began
3 work at Cardinal Health?

4 A. I was in the Marine Corps.

5 Q. What was your job in the Marine
6 Corps?

7 A. I was a military policeman in the
8 Marine Corps.

9 Q. And when you started at Cardinal
10 Health, what location did you begin work at?

11 A. At the Wheeling DC.

12 Q. Do you know how long the Wheeling
13 distribution center has been in operation?

14 A. It's been in operation since 1899
15 [sic].

16 Q. And today in 2018, approximately
17 how many people are employed at the Wheeling
18 distribution center?

19 A. Approximately 300.

20 Q. So going back to the 1980s when
21 you began your job at Cardinal Health, what was
22 your first job?

23 A. My first job, I was going to
24 school for criminal justice, police science to

1 be a state policeman. My first job was a
2 janitor in the warehouse.

3 Q. Did you eventually change jobs at
4 Cardinal?

5 A. Sure.

6 Q. Your first job, was it a part-time
7 job or a full-time job?

8 A. It was part-time for the first few
9 months, yes.

10 Q. And when you took on a full-time
11 job at Cardinal, what was that job?

12 A. It was as a delivery driver.

13 Q. How long were you a delivery
14 driver?

15 A. For about a year and a half.

16 Q. What was your next job?

17 A. Breaking the vacations on the
18 inside, learning the business, pick, packing,
19 and shipping orders.

20 Q. For those not familiar with the
21 term, what does it mean to be "breaking
22 vacations"?

23 A. I would be a delivery driver up
24 until when someone inside was picking the

1 orders. And then I would be -- they would go on
2 vacation, and I would move inside and do their
3 job.

4 Q. And you spoke earlier today about
5 your time as a pharmacy business consultant. In
6 what year did you become a pharmacy business
7 consultant, approximately?

8 A. It would be 1991.

9 Q. And from 1991 through today, for
10 most of your career, have you either been a
11 pharmacy business consultant yourself or
12 supervised in some capacity pharmacy business
13 consultants?

14 A. Yes.

15 Q. In your role as a pharmacy
16 business consultant or as a supervisor of
17 pharmacy business consultants, have you ever
18 attempted to market opioids?

19 A. No.

20 Q. Have you ever attempted to
21 generate sales of opioids?

22 A. No.

23 Q. In your career at Cardinal Health,
24 have you ever spoken to a doctor?

1 A. No.

2 Q. In your career at Cardinal Health,
3 have you ever tried to get a doctor to prescribe
4 a particular medication?

5 A. No.

6 Q. Earlier today, Plaintiff's counsel
7 asked you some questions about the Birmingham,
8 Alabama distribution center and some other
9 distribution centers.

10 Do you recall that?

11 A. Yes.

12 Q. Do different distribution centers
13 ship to different areas of the country?

14 A. Yes.

15 Q. To your knowledge, did the
16 Birmingham, Alabama distribution center ever
17 ship any medications to Ohio?

18 A. No.

19 Q. What distribution center covers
20 northern Ohio, particularly Cuyahoga and Summit
21 Counties, the Cleveland and Akron area?

22 A. It would be the Wheeling
23 distribution center.

24 Q. To your knowledge, has the DEA

1 ever suspended shipments from Cardinal Health
2 from the Wheeling, West Virginia distribution
3 center?

4 A. No.

5 Q. From your perspective, can you
6 describe Cardinal Health's role in the
7 healthcare system?

8 A. Our country's healthcare
9 continuum, we are the distributor between -- the
10 middleman between the manufacturer and the
11 retailer. We distribute FDA-approved
12 medications into licensed independent retail
13 pharmacies.

14 Q. In your time as a pharmacy
15 business consultant and supervising pharmacy
16 business consultants and in interacting with
17 pharmacies, did you ever know a pharmacy to
18 service patients from outside the town where
19 that pharmacy is located?

20 A. Yes.

21 Q. Earlier today you were asked some
22 questions about the QRA anti-diversion team.

23 Are you familiar with the QRA
24 anti-diversion team?

1 A. Yes.

2 Q. In addition to the work of the QRA
3 anti-diversion team, what are some of the things
4 that your sales team does to try to prevent
5 diversion?

6 A. We act as the eyes and ears of the
7 company on the ground to report up any unusual
8 or out of the ordinary activity that we see or
9 witness at a pharmacy location.

10 Q. Is anti-diversion something you
11 emphasize to your team?

12 A. Yes.

13 Q. Are the members of your team
14 trained on anti-diversion procedures?

15 A. Yes.

16 Q. When -- strike that.

17 In the event that Cardinal Health
18 were to cut off a customer and refuse to ship
19 controlled substances to them because of
20 anti-diversion concerns, would that impact the
21 salary or commission of any Cardinal Health
22 employee?

23 MR. LAMB: Objection.

24 A. No.

1 Q. How does Cardinal Health ensure
2 that the salary and commission of employees is
3 not impacted by the decisions of the QRA
4 anti-diversion team?

5 MR. LAMB: Object to form.

6 A. The portion of the budget dollars
7 that are made up of that particular store's
8 purchases are removed from the targeted goal
9 going forward.

10 Q. What is the impact of that?

11 A. That the PBC, the sales manager
12 are not impacted by the loss of that business in
13 any way financially.

14 Q. You were asked some questions
15 earlier today about Hurley Pharmacy and Family
16 Discount Pharmacy.

17 A. Yes.

18 Q. For both those pharmacies, to your
19 knowledge, did there come a time when Cardinal
20 Health cut them off and refused to ship
21 controlled substances to them?

22 A. Yes.

23 Q. Do you know whether after Cardinal
24 cut these pharmacies off and refused to ship to

1 them, DEA took any action against those two
2 pharmacies?

3 A. I am not aware.

4 Q. You're not aware of any action
5 taken by DEA?

6 A. No, I'm not.

7 Q. Do you know whether those
8 pharmacies still have active DEA licenses and
9 are free to receive opioids from other
10 distributors?

11 A. Yes, I believe they do.

12 Q. All right. So, to your knowledge,
13 DEA has not deemed it necessary to take any
14 action against those two pharmacies or revoke
15 their pharmacist license?

16 MR. LAMB: Objection to the form.

17 A. Not that I know of.

18 Q. Let me rephrase that question in
19 response to the objection.

20 To your knowledge, has DEA deemed
21 it necessary to take any action against the
22 either Hurley's Pharmacy or Family Discount
23 Pharmacy?

24 A. Not that I'm aware of.

1 Q. I believe you mentioned something
2 earlier in your testimony about Generation Rx.

3 A. Yes.

4 Q. What is Generation Rx?

5 A. It's a program put together in
6 conjunction with Ohio State University. It's a
7 series of presentations that we put on for
8 students and their parents warning them of the
9 dangers of prescription drug abuse and
10 diversion.

11 Q. Are you personally involved in
12 that programming?

13 A. I have been, yes.

14 Q. What is your personal role with
15 respect to Generation Rx? What have you done?

16 A. I've done several presentations in
17 local churches, at -- in street fairs, we've set
18 up booths. And my team has been active in
19 putting on presentations with schoolkids, school
20 children and their parents in all of our
21 territories.

22 Q. Have you also brought the
23 Generation Rx programming to your own church?

24 A. Yes, I have.

1 Q. Does Cardinal encourage its
2 employees to take part in these anti-diversion
3 initiatives?

4 A. Yes, they do.

5 Q. Are there any other anti-diversion
6 initiatives that you're aware of at Cardinal?

7 A. We talked about the Drug Take-Back
8 days.

9 Q. What are those?

10 A. Those are where we work together
11 with independent retail pharmacies in our
12 territories to put on or to market an
13 opportunity for people in their community,
14 whether they're their patients or not and
15 surrounded communities to have an opportunity to
16 bring back unused drugs from the medicine
17 cabinet to have them properly disposed of.

18 Q. Mr. Carney, in your experience at
19 Cardinal Health over the last 30 years or so,
20 have you ever seen Cardinal Health ship an order
21 that you believed would be diverted?

22 MR. LAMB: Object to the form.

23 A. No.

24 MR. PYSER: No further questions.

1 MR. LAMB: I've got a couple
2 things really quick.

3 - - -

4 RECROSS-EXAMINATION

5 BY MR. LAMB:

6 Q. Let me show you Plaintiff's
7 Exhibit 1.4875, which is the next --

8 MR. LAMB: What's the exhibit
9 number? What's that number?

10 MS. HULETT: 34.

11 MR. LAMB: 34.

12 - - -

13 (Cardinal-Carney Exhibit 34 marked.)

14 - - -

15 BY MR. LAMB:

16 Q. Is this an e-mail you sent?

17 MR. PYSER: Object to this line of
18 questioning. Beyond the scope of the
19 examination.

20 A. Yes.

21 Q. Read that to us, please, sir.

22 A. My words?

23 Q. Yes.

24 A. "Now I'm starting to think when is

1 enough enough? Do you have a line of sight on
2 what the total payouts in the various
3 settlements related to the issues might be by
4 now? 1B, 2B? When will it be enough?"

5 Q. Is it true that Cardinal
6 Healthcare in fiscal year 2017 generated
7 \$129 billion in revenue?

8 MR. PYSER: Object to form.

9 A. I believe that's true, yes, sir.

10 Q. Is it also true that over 150,000
11 people died as a result of opioid-related
12 overdose in 2017?

13 MR. PYSER: Object to form. And
14 continuing objection to this line of
15 questioning as beyond the scope.

16 A. I believe so, yes, sir.

17 MR. LAMB: That's all I've got.

18 THE VIDEOGRAPHER: The time is now
19 4:04. This concludes the deposition.
20 We're going off the record.

21 (Discussion held off the record.)

22 MR. PYSER: We're going to mark
23 Bates number CAH_MDL2804_00100156 by
24 agreement of counsel as Exhibit 32, and

1 that will stand in for both Exhibits 32
2 and 33 in the transcript.

3 MR. LAMB: That's correct.

4 (Signature not waived.)

5 - - -

6 Thereupon, at 4:04 p.m., on Tuesday, October
7 17, 2018, the deposition was concluded.

8 - - -

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1 CERTIFICATE

2 STATE OF OHIO :

SS:

3 COUNTY OF FRANKLIN :

4

5 I, RAYMOND P. CARNEY, do hereby certify that

6 I have read the foregoing transcript of my

7 cross-examination given on October 16, 2018; that

8 together with the correction page attached hereto

9 noting changes in form or substance, if any, it is

10 true and correct.

11

RAYMOND P. CARNEY

12

13 I do hereby certify that the foregoing

14 transcript of the cross-examination of RAYMOND P.

15 CARNEY was submitted to the witness for reading and

16 signing; that after he had stated to the undersigned

17 Notary Public that he had read and examined his

18 cross-examination, he signed the same in my presence

19 on the _____ day of _____, 2018.

20

21 _____
NOTARY PUBLIC - STATE OF OHIO

22 My Commission Expires:

23 _____, _____.
24

CERTIFICATE

STATE OF OHIO

:

SS:

COUNTY OF FRANKLIN :

I, Carol A. Kirk, a Registered Merit Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named RAYMOND P. CARNEY was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by any attorney or party hereto or financially interested in the action; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio on this 19th day of October 2018.

CAROL A. KIRK, RMR

NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: April 9, 2022.

- - -

1 DEPOSITION ERRATA SHEET

2 I, RAYMOND P. CARNEY, have read the transcript
of my deposition taken on the 19th day of October
3 2018, or the same has been read to me. I request that
the following changes be entered upon the record for
4 the reasons so indicated. I have signed the signature
page and authorize you to attach the same to the
5 original transcript.

6 Page Line Correction or Change and Reason:

7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
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23	_____	_____	_____

24 Date _____ Signature _____